

1 A. We didn't socialize as much after I opened the  
2 coffee shop but we still spoke quite often, three times  
3 a day sometimes, once a day, occasionally we would skip  
4 a day, so quite frequently.  
5 Q. She confided in you?  
6 A. Yes.  
7 Q. What kinds of things did she share with you,  
8 just general topics?  
9 A. Relationships with boyfriends, future plans,  
10 her career, problems that she may be experiencing the  
11 day of. Just hopes and dreams and just girly chit chat.  
12 Q. Do you know the defendant, Tom Capano?  
13 A. I do.  
14 Q. When did you meet him first?  
15 A. When I personally met him was in my house when  
16 Annie was a roommate, so it must have been in '92, the  
17 first year that she moved in. I believe it was the fall  
18 of '92.  
19 Q. Fall of '92? When did she move in with you?  
20 A. Oh, sorry. Yes, okay, she moved in December of  
21 '92, so it was the following fall which would have been  
22 '93.  
23 Q. So this is the fall of '93. Do you recall this

1 incident when you first met him?  
2 A. I do.  
3 Q. Would you describe what happened, that you  
4 observed?  
5 A. I was coming home from the gym and it was  
6 approximately 7:00, 8:00 at night and I walked into the  
7 first room, which is the family room -- dining room,  
8 sorry, living room. And he was there and they were on  
9 the couch and they were drinking a bottle of red wine  
10 and they were kind of situated facing each other,  
11 shoulder to shoulder type thing. I just felt that  
12 something was going on. I just thought it was unusual  
13 that he was there. It was a weeknight, it was a work  
14 night and they were drinking a bottle of wine, it was  
15 relatively early, so I just thought it was odd for him  
16 to be there. That was the first time that I met him.  
17 Q. Did you talk with Anne Marie about him that  
18 night or shortly thereafter?  
19 A. Yes. After he left I questioned why he was  
20 there. Because I heard her speak of him before, I had  
21 never met him, but I knew he was married, I knew he was  
22 significantly older than her and I just said to myself  
23 and my roommate and Annie why is he here? Why are you

1 drinking wine and what is going on? And again I sensed  
2 some body language between them when they were situated  
3 on the couch.  
4 Q. What did Anne Marie say to you?  
5 A. We are just friends. He is just over chatting,  
6 just a friend of mine from work, they know each other  
7 from work somehow, Capano dealt with the Governor's  
8 office through work and Annie was the Governor's  
9 scheduler, so maybe she received the phone calls,  
10 intercept phone calls.  
11 Q. Would it be fair to say that you were not too  
12 happy that he had been over?  
13 A. Yeah. My first impression I thought it was odd  
14 and I wasn't very happy that a married man with children  
15 was at our house with her.  
16 Q. Did you tell Anne Marie that you felt that way?  
17 A. Yes. And maybe not that night, soon after I  
18 confronted her and I asked her is there a relationship  
19 with him and she denied it, she said no there is not, we  
20 are just friends.  
21 Q. Did you ever see him again at your house?  
22 A. I didn't see him at the house. My roommate  
23 did, Braunlin.

1 Q. Was it your understanding that he continued to  
2 come over to your house for awhile?  
3 A. Yes. Three or four times, I recollect, from  
4 either my roommate or even Annie may have mentioned that  
5 he was there.  
6 Q. Do you know why he stopped coming over?  
7 A. No.  
8 Q. Did you ever know before June 27, 1996 that  
9 Anne Marie Fahey had had an affair with Tom Capano?  
10 A. No, I did not.  
11 Q. You opened your coffee shop when?  
12 A. August of '95? I said that in a question.  
13 August of '95.  
14 Q. During that summer of '95 did and Annie talk  
15 about Tom Capano at all?  
16 A. We did. She spoke of him on several occasions  
17 and he helped me incorporate the business, some legal  
18 work that had to be done. And when I was talking to  
19 Annie about some of the things I wasn't really sure to  
20 do with a business, and I guess she was already talking  
21 to Capano about it, and she offered him to help me and  
22 thought it would be good idea that he came down to the  
23 store and we could sit and talk and get some of this

1 legal work done. There wasn't a lot of legal work, it  
2 was just incorporating the business.

3 Q. He did help you with that, correct?

4 A. Yes.

5 Q. Did he charge you for that?

6 A. Yeah. Charged me the fee to have the papers  
7 filed, which is a general fee, so I don't think it was  
8 anything additional.

9 Q. He didn't charge you for his own time?

10 A. No.

11 Q. Did he ever take you out to lunch?

12 A. Yes, he did.

13 Q. Where did he take you?

14 A. Two times we went out to lunch. Again, the  
15 reasons were to discuss the business, to help me with  
16 the business.

17 Q. And this is all before you opened in August of  
18 '95?

19 A. Yes.

20 Q. Who went to lunch?

21 A. Annie, Capano, and I.

22 Q. And who paid for lunch?

23 A. He did.

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1 Q. Did you go -- what types of restaurants did you  
2 go to?

3 A. The Shipley Grille, which is located, I  
4 believe, two blocks from Java Jack's, we went there and  
5 then went to the Hotel DuPont.

6 Q. Was he helpful in setting up your business?

7 A. Yes. Uh-uh. He gave me some ideas, talked to  
8 me about the menu, talked to me about purchasing  
9 equipment, what I would purchase if I had enough money,  
10 the risks involved, so, yes, he was helpful.

11 Q. Did you appreciate his help?

12 A. I guess you learn to appreciate everyone's  
13 help. You have to open your mind up, when you open a  
14 business everybody wants to put their two cents in. So  
15 I thought he would be a good contact to have with him  
16 being located right next door and working in the law  
17 firm, so I was appreciative.

18 Q. Was there anything you did not appreciate?

19 A. As the business opened and progressed I just  
20 find this unusual, again, but he was concerned, he asked  
21 me when he saw me how the business was doing,  
22 financially how am I doing. He wanted to come down and  
23 set up a time to go over my books, which I felt that was

1 a little odd a little invasion of my privacy. But I

2 just said I knew -- I didn't want him to but blew it off  
3 and nothing was said from there.

4 Q. Who was your first customer at Java Jack's when  
5 you opened?

6 A. Capano wanted to be. I think it actually was  
7 the day before we ever officially opened, but he  
8 purchased a beverage and he was the first customer rung  
9 up on the register.

10 Q. Whose idea was that?

11 A. His.

12 Q. He asked you about it?

13 A. Yes. He was adamant about it. He wanted to be  
14 the first customer.

15 Q. And during the first couple of months during  
16 your business did you see Mr. Capano on a regular basis?

17 A. Yeah. He came in practically everyday, if not  
18 everyday -- there may have been a few days here and  
19 there -- at 9:00 and he got coffee.

20 Q. How long was he in on this regular almost daily  
21 basis as you set up your business?

22 A. Probably until mid August -- sorry, mid  
23 October, a month and a half, couple months.

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1 Q. So from August of '95 until about mid October  
2 he is in almost everyday?

3 A. Yes.

4 Q. What frequency after mid October is he in?

5 A. Didn't see much of him. He came in  
6 occasionally with I don't know if it was a client or  
7 another lawyer and had lunch a couple of times,  
8 approximately. And he would still stop in occasionally  
9 and get coffee, so not a whole lot.

10 Q. Did you notice any changes in the defendant as  
11 the fall of '95 progressed, other than he is not coming  
12 in as often?

13 A. Yes. His physical appearance was definitely  
14 altered. He began to lose a lot of weight. His cheeks  
15 were withdrawn, he just didn't look good. He looked  
16 depressed, he looked sad, as I said he lost a lot of  
17 weight, he looked like a sad person.

18 Q. Did you ever talk with him about your  
19 observations?

20 A. I did. I said what's wrong? You are not  
21 eating. He said -- he never went into it he shook his  
22 head and tried to put a smile on and said things aren't  
23 going good, I'm depressed, we will talk about it. We

1 will talk about it type of thing, but we never did. He  
2 was going to call and come down and talk about his  
3 problems but he never did that. I do recall a time he  
4 came into the store right before Christmas, second week  
5 of December possibly, that he said he wanted to kill  
6 himself, that he was suicidal.

7 Q. And I mean, I take it that doesn't happen often  
8 in your coffee shop?

9 A. No. And I was very concerned and wanted to  
10 talk to him more about it and he turned and just walked  
11 away. And I immediately called Anne Marie right away, I  
12 was concerned. I said to Annie, Tom was just in, he  
13 seemed really depressed, seemed really down and talked  
14 about suicide and what is wrong, what can we do type of  
15 thing. So her response was oh, he's okay, he's okay,  
16 there is nothing wrong and he'll be fine. She didn't  
17 seem too concerned and she was closer to him than I was.  
18 So whenever I did see him I asked how he was doing or  
19 how he was feeling.

20 Q. Do you recall December of '95 around this time  
21 discussions you had with the defendant about dinner  
22 plans?

23 A. Yes. And I don't know whether it was before or

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1 after he talked about his depression, I believe it was  
2 before. He wanted to take Annie and I out to dinner in  
3 Philadelphia, it would just be a good thing to go out  
4 and get together. And again, I didn't see Annie  
5 socially at that time so I kind of wanted to go too, I  
6 thought that would be fun, would go out to dinner to  
7 Philadelphia. So he tried to organize that through me.

8 Q. When you say through you, did you call Annie  
9 about this?

10 A. Yeah, I called Annie several times.

11 Q. What was her reaction to the idea of having  
12 dinner with Tom Capano?

13 A. She did not want to go.

14 Q. Sorry?

15 A. December was a busy time for her and she kept  
16 saying I have this to do, I have that to do. And he  
17 would come into the store and ask me this and I would  
18 call her on the phone pretty much thereafter and every  
19 time she was busy, wouldn't commit, had plans. I said  
20 let's pick a date, pick a date in January, and she  
21 couldn't do it, couldn't commit to it.

22 Q. Did she tell you why she didn't want to commit  
23 to dinner?

1 A. No. But she seemed like -- kind of hemmed and  
2 hawed. She never said why. She just said oh -- she  
3 told me she did not want to go, she did say that. And  
4 she just said oh, we will get together some time. But  
5 she made it sound more of an effort than anything.

6 Q. Did she eventually agree to go?

7 A. She did, I think, under my persuasion, but she  
8 did. We ended up going. It was mid January.

9 Q. Do you remember where you went?

10 A. Yes. To, I think, it was an Italian  
11 restaurant, La Familia in Philadelphia.

12 Q. Who went?

13 A. The three of us.

14 Q. Before you went did Anne Marie give you any  
15 kind of instructions about certain topics that could not  
16 be discussed?

17 A. She did. She mentioned Mike Scanlon. She said  
18 whatever you do don't talk about Mike tonight, Tom  
19 doesn't like him. And I think I may have asked why and  
20 she went on to say they have a work relationship that is  
21 the reason why they do not get along. I didn't know if  
22 they knew each other, and apparently they knew each  
23 other through work, I guess, somehow they had contact.

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1 Q. In fact, you had already talked to Tom Capano  
2 about Mike Scanlon.

3 A. I said to myself, oops, it's already been done,  
4 but didn't tell her that.

5 Q. Now, before you went to the restaurant in mid  
6 January, that evening, where did you go?

7 A. Annie picked me up and we drove to Capano's  
8 home on Grant Avenue.

9 Q. And what happened at his house?

10 A. We went in, I believe we went through the  
11 garage, walked upstairs and he gave us a tour, gave us a  
12 tour of the kitchen. And I brought him a pasta maker  
13 that I found in my basement, I remember doing that. And  
14 he gave us a tour of the home, each room and he was  
15 proud of it, just recently went out and bought some  
16 things for the home and he was excited, excited to show  
17 us, proud of the house. Showed us the girls' rooms and  
18 how he purchased them -- I don't think he purchased each  
19 of them one, but wanted the girls to feel comfortable in  
20 his home, but they all had a boom box and telephone. He  
21 made a point of saying that, I recall.

22 MR. CONNOLLY: Your Honor, if I may at this  
23 point move for the admission of two photographs. I

1 believe they are without objection.  
 2 MR. MAURER: We have seen them, they are not  
 3 objected to.  
 4 THE COURT: In that case, they may be admitted.  
 5 That would be State's Exhibits 58 and 59.  
 6 THE PROTHONOTARY: So marked.  
 7 (State's Exhibits 58 and 59 were admitted into  
 8 evidence.)  
 9 BY MR. CONNOLLY:  
 10 Q. Mrs. Steinhoff, I'm going to show you State's  
 11 Exhibit 58. You have seen this picture before?  
 12 A. I have.  
 13 Q. And what is it a picture of?  
 14 A. The family room of Capano's home.  
 15 Q. This is the home at Grant Avenue?  
 16 A. Yes.  
 17 Q. Now, is it laid out the way you saw that room  
 18 in mid January, 1996?  
 19 A. No.  
 20 Q. What is the significant difference or what are  
 21 the significant differences in that picture from what  
 22 you observed in mid January, 1996?  
 23 A. The situation of the television it was to the

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1 left, kitty-corner, actually where those pillows are.  
 2 Q. Do you recognize this TV and the TV holder?  
 3 A. TV stand?  
 4 Q. TV stand, thank you.  
 5 A. I couldn't identify the actual television, it  
 6 looked like it.  
 7 Q. It looked something like this?  
 8 A. Yes.  
 9 Q. How was that in position?  
 10 A. Kitty-corner on an angle.  
 11 Q. Were there other furniture in this room?  
 12 A. There was a couch right in front of the  
 13 television where the television is now.  
 14 Q. Before we ask you to get to the couch, let me  
 15 show you State's Exhibit 59, and do you recognize this?  
 16 A. I do not. I don't remembering these, the  
 17 pillows.  
 18 Q. Other than the pillows, do you recognize the  
 19 room, the TV stand?  
 20 A. Yes.  
 21 Q. You talked about the stack of pillows before  
 22 this TV was in the room when you were in the room?  
 23 A. Yes.

1 MR. CONNOLLY: Your Honor, at this point I  
 2 would like marked for identification --  
 3 THE PROTHONOTARY: State's Identification C.  
 4 MR. CONNOLLY: --State's Identification C.  
 5 THE COURT: All right. State's C for  
 6 Identification.  
 7 (State's Exhibit C was marked for  
 8 identification.)  
 9 BY MR. CONNOLLY:  
 10 Q. Can you see that, Mrs. Steinhoff?  
 11 A. Yes.  
 12 Q. What is this?  
 13 A. It is the layout of the, I believe, that's the  
 14 dining room and then the family room.  
 15 Q. This is the layout of the same room you are  
 16 talking about it?  
 17 A. That's the way I saw it, yes.  
 18 Q. This would assist you in testifying here today?  
 19 A. Yes.  
 20 Q. The position of -- you see the TV stand, love  
 21 seat and dining room table, are they positioned the way  
 22 you saw them approximately in mid January of 1996?  
 23 A. Yes.

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1 THE COURT: Has Mr. Capano had an opportunity  
 2 to see that?  
 3 BY MR. CONNOLLY:  
 4 Q. Well, after you had the tour of the defendant's  
 5 home, you went to La Famiglia in Philadelphia?  
 6 A. Yes.  
 7 Q. How did the dinner go?  
 8 A. I enjoyed myself. It was nice. It was a very  
 9 nice restaurant. Anne Marie wasn't in the best of  
 10 moods. She wasn't her, as she usually is, very overly  
 11 happy and just full of life. She was just average that  
 12 night. She wasn't like real happy or down, she was just  
 13 average.  
 14 Q. Do you recall a time during the dinner when  
 15 Anne Marie went to go to the bathroom?  
 16 A. Yes.  
 17 Q. And I take it it was just the three of you at  
 18 this dinner?  
 19 A. Yes.  
 20 Q. When she went to the bathroom you had a  
 21 conversation with the defendant, correct?  
 22 A. I did.  
 23 Q. Would you tell us about that conversation?



1 A. He said to me, he asked me why Annie hated him.  
2 And I kind of thought -- I just looked at him, what do  
3 you mean she hates you? She doesn't hate you. And he  
4 said yes, she does. And he kind of shook his head  
5 saying, oh, she hates me, she hates me. And I said she  
6 has never said that to me. Why would she hate you? I  
7 just thought it was odd.

8 Q. And it kind of left unresolved?

9 A. Exactly. I just asked him why would she hate  
10 you? And he's like I don't know, I don't know, she just  
11 hates me. I just thought those words were strong, hate.  
12 That was unusual.

13 Q. Did you ever later tell Annie about this?

14 A. I don't think so.

15 Q. Did you talk that evening at all about her  
16 upcoming birthday party?

17 A. I did. When she was also in the bathroom I  
18 mentioned to him, and I assumed he was invited because I  
19 knew they were friends, to her surprise birthday,  
20 surprise 30th birthday, so I did mention to him, and I  
21 realized he wasn't invited and felt awkward for  
22 mentioning it.

23 Q. Why do you say you realized he wasn't invited?

1 A. He just seemed shocked. Well, he didn't know  
2 about it apparently. I felt like I told him, and he  
3 kind of looked at me like oh, no, I'm not invited and  
4 then kind of back peddled and said it is probably just  
5 friends, going to be small.

6 Q. Who paid for dinner?

7 A. He did.

8 Q. And after dinner where did you go?

9 A. We went back to his home.

10 Q. About what time was this?

11 A. Oh boy, it was quite late, 11, 12:00.

12 Q. What happened at his house?

13 A. We went upstairs and he asked if we wanted to  
14 see a movie and we didn't want to stay. Then he  
15 offered -- he gave me a movie, Amadeus, to take home  
16 thinking my husband and I would like to watch it, so I  
17 took that movie home.

18 Q. Have you ever returned that to him?

19 A. No, I have not.

20 Q. After this dinner, did you see Tom Capano  
21 again?

22 A. Yeah. He came into the coffee shop, I believe,  
23 with another lawyer for lunch. I definitely remember

1 one time, he probably was in a couple of times and that  
2 was maybe March, April.

3 Q. Do you recall learning at some point anything  
4 about Tom Capano's -- one of his daughters?

5 A. Yeah. I believe it was January. I think I  
6 referred back to when Tom said he was suicidal and Annie  
7 went on to explain that it was because of his daughter.  
8 She told me not to say anything, but his daughter had a  
9 brain tumor and was going into A.I. Institute for  
10 surgery and that was one of the reasons he was down in  
11 the dumps in December. She told me that later, I guess  
12 it was January time.

13 Q. You mentioned before you went to this dinner  
14 you were instructed not to bring up this subject of Mike  
15 Scanlon?

16 A. Yes.

17 Q. Had she told you about Mike Scanlon?

18 A. Yes.

19 Q. What had Annie told you?

20 A. She was very excited about him. When you start  
21 dating somebody you don't want to get your hopes up, but  
22 she really liked him. And eventually, I guess it was  
23 early, maybe Christmas time, before Christmas, I can't

1 recall exactly when, but I guess it was April time  
2 before we went out to dinner she was talking about how  
3 she wanted to marry him. And she was, and I would say  
4 to her do you think this is the one? Do you think this  
5 is the one? And she would have big grin on her face and  
6 smile and say, you know, I think so, but didn't want to  
7 get too excited because you never know how things go.  
8 But she was in love with him. She said that. She told  
9 me she was in love with him.

10 Q. Had she ever talked about other boyfriends to  
11 you?

12 A. Not in that sense, not using love, those are  
13 strong words for Annie.

14 Q. At least as far as conversations with you?

15 A. Yes. And she has had relationships. He made  
16 her happy and she would say that.

17 MR. CONNOLLY: Your Honor, may I have a moment?

18 Thank you, Judge.

19 BY MR. CONNOLLY:

20 Q. When did you last see Anne Marie?

21 A. Wednesday, before she disappeared.

22 Q. And where did you see her?

23 A. Java Jack's.

Q. There was a couch in that room; do you recall?

A. Yes.

Q. The color of that couch was?

A. I believe it to be neutral.

Q. In fact, when you testified before the grand jury I think you indicated that the couch was beige in color?

A. Beige. To me, when I say neutral I mean beige or tan like a light color. It wasn't distinct that I recall.

Q. Do you recall saying at the grand jury that the couch was beige in color?

A. Yes.

Q. That was your recollection of the color of the couch and you have given us your recollection of the description of the room; is that correct?

A. Yes.

MR. MAURER: Thank you. That's all I have.

THE COURT: Mr. Connolly.

MR. CONNOLLY: No further questions.

I ask that the Court excuse the witness.

THE COURT: Mr. Maurer?

MR. MAURER: That's fine, your Honor.

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THE COURT: Miss Steinhoff, you are excused.

MR. CONNOLLY: If I can have a moment, please?

THE COURT: You may.

MR. CONNOLLY: Your Honor, at this point I would move to admit State's Exhibit 60, and then a stipulation which I would ask be marked State's Exhibit 61. I believe both will be admitted without objection.

THE COURT: Mr. Maurer, any objection to the stipulation?

MR. MAURER: There is none, your Honor.

THE COURT: All right. The exhibit then is admitted as State's Exhibit 60 and the stipulation concerning it is State's Exhibit 61.

THE PROTHONOTARY: So marked.

(State's Exhibits 60 & 61 were admitted into evidence.)

MR. CONNOLLY: May I read the stipulation?

THE COURT: Yes.

MR. CONNOLLY: Stipulation regarding La Famiglia Restaurant. It is hereby stipulated by and through their respective counsel that one La Famiglia is a restaurant located at 8 South Front Street, Philadelphia. La Famiglia operated as a restaurant

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State Exhibit 60 is the reservation log book for La Famiglia in 1996.

State Exhibit 60 is authentic and all objections to its admissibility, other than relevance or weight are waived.

This stipulation shall be read and admitted into evidence at trial and is signed by all counsel.

THE COURT: Mr. Wharton?

MR. WHARTON: Thank you, your Honor.

State calls Virginia Columbus.

VIRGINIA COLUMBUS,

the witness herein, having first been duly sworn on oath, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. WHARTON:

Q. Good morning, Miss Columbus?

A. Good morning.

Q. How old are you?

A. Twenty-eight.

Q. And where do you live?

A. 300 Alders Drive.

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Q. Where is that located?

A. Wilmington.

Q. Is that where you grew up, basically?

A. Yes.

Q. Are you employed now?

A. Well, currently I'm a full-time student and working.

MR. OTERI: Could the witness please speak up?

THE COURT: Get as close to the microphone as you can.

THE WITNESS: Do you need me to repeat myself?

BY MR. WHARTON:

Q. Please.

A. Currently I'm a full-time student and working part-time.

Q. Prior to becoming a full-time student, did you have a full-time job?

A. Yes.

Q. What was that job?

A. I worked for Governor Carper. My last position was in constituent relations.

Q. When did you begin working for Governor Carper?

A. In August of '93.

1 Q. And can you tell us since your last position  
2 was in constituent relations I guess you started out  
3 with something else?

4 A. I was the runner for about a year and then I  
5 was a receptionist for about three and a half years,  
6 then I was in constituent relations.

7 Q. Did you know Anne Marie Fahey?

8 A. Yes.

9 Q. And did you know her before you both worked  
10 with the Governor?

11 A. Yes.

12 Q. How long had you known her?

13 A. I met Anne Marie when she began dating my  
14 brother, which would have been in '88 or '89.

15 Q. What is your brother's name?

16 A. Paul Columbus.

17 Q. Did you become friends with her?

18 A. Yes.

19 Q. How good of friends did you become with her?

20 A. Annie was like a sister with me, we were very  
21 good friends.

22 Q. At some point did Anne Marie live with your  
23 family?

1 A. Yes.

2 Q. When was that?

3 A. She lived with us prior to working for Tom  
4 Carper in Washington, shortly after she graduated from  
5 Wesley.

6 Q. Was she dating your brother then?

7 A. Not at the time. I think it was an on and off  
8 thing at that point.

9 Q. You need to speak up.

10 A. It was sort of on and off at that point.

11 Q. When she lived with you was it off, is that  
12 what you are saying?

13 A. Yeah.

14 Q. So she was living with your family but not  
15 dating your brother at that point?

16 A. That's correct.

17 Q. Was she close to your family as well?

18 A. Yes.

19 Q. Were you living in the household at the time  
20 she was living in the household?

21 A. Yes.

22 Q. Were you familiar with some of her personal  
23 habits in terms of neatness or lack there of or that

1 kind of thing?

2 A. Yes. She was extremely neat. As far as some  
3 of her habits, I mean, her bedroom was always clean,  
4 tidy, bed was always made. She used to fold her laundry  
5 before she put it in the hamper, things like that.

6 Q. When the clothes were dirty?

7 A. Yeah.

8 Q. How about shoes?

9 A. Her shoes used to go back in the original box  
10 with any original packaging that came with it. If there  
11 was stuffing in the toes, the stuffing went back in the  
12 toes.

13 Q. When you worked for the Governor, as a  
14 receptionist I take it that you handled the switchboard;  
15 is that right?

16 A. Yes.

17 Q. How, if someone wanted to call Anne Marie from  
18 outside the office, how would that phone call be routed?  
19 Would it come through you or not?

20 A. Usually it would come through me, and I would  
21 let Anne Marie know who was on the line.

22 Q. Was there a way to reach her directly?

23 A. Sue Campbell who was the Governor's executive

1 secretary at the time had her own line that sometimes  
2 Anne Marie used. Had her own incoming line that  
3 wouldn't go through the receptionist.

4 Q. So Sue Campbell had her own private line, so to  
5 speak?

6 A. Yes.

7 Q. You said Anne Marie used that occasionally?  
8 What types of occasions would she use it?

9 A. Usually if she was in Dover, because Anne Marie  
10 worked in Wilmington, if she was in Dover she would have  
11 calls coming through Sue's line.

12 Q. You would not be aware of those calls?

13 A. No.

14 Q. But you would be aware of those incoming calls  
15 when Sue Campbell was in Wilmington?

16 A. Yes. And actually if Anne Marie or Sue weren't  
17 at the desk then that line would bump up to me. But if  
18 the line was answered then I wasn't aware of it.

19 Q. Did you know or do you know the defendant in  
20 this case?

21 A. Yes.

22 Q. How is that it you know him?

23 A. I met him through Anne Marie.

1 Q. Do you know whether or not he had occasion to  
2 call her while you were a receptionist?

3 A. Yes.

4 Q. How frequently would he call her?

5 A. Often. I would say two to three times a week.

6 Q. What did you -- did you know what the status of  
7 their relationship was then -- Anne Marie Fahey's and  
8 the defendants, or did you ask her about that  
9 relationship?

10 A. It was my understanding that they were just  
11 friends.

12 Q. Is that what she told you?

13 A. That's what she told me.

14 Q. She didn't tell you that they had had a  
15 different kind of relationship?

16 A. No.

17 Q. Were you working in the Governor's office  
18 around Valentine's Day of 1996?

19 A. Yes.

20 Q. Do you know whether or not Anne Marie Fahey  
21 received any flower deliveries, and Valentine's flower  
22 deliveries?

23 A. Yes. She received two that day.

1 Q. Now, I take it that if someone was making a  
2 delivery they would have to come to you at least  
3 initially in order to make the delivery?

4 A. Yes. Because I was at the front desk which was  
5 in the front lobby, so.

6 Q. So you are aware of two floral deliveries?

7 A. Yes.

8 Q. Do you know who sent the first one?

9 A. Michael Scanlon.

10 Q. Do you know Anne Marie Fahey's reaction to  
11 that?

12 A. She was happy. She kind of took them back to  
13 her office and was smiling.

14 Q. You knew -- did you know about her relationship  
15 with Michael Scanlon?

16 A. Yes.

17 Q. Now, did she receive any other -- you said she  
18 received two floral deliveries for Valentine's Day?

19 A. Yes. She received roses later that day or  
20 morning.

21 Q. Can you describe what happened with the  
22 flower -- the roses delivery? I take it the delivery  
23 person brought it to the --

1 A. Brought them to the front desk.

2 Q. Can you describe what was brought?

3 A. It was a large box, a box that a dozen long  
4 stem roses that would come in. And I called to Anne  
5 Marie and let her know there was a delivery for her out  
6 front. And she came out front and took the flowers and  
7 was annoyed with them and said she didn't want them and  
8 went back to her office with them.

9 Q. Took them back to her office?

10 A. Yes.

11 Q. What was her demeanor with respect to when she  
12 got that delivery?

13 A. She was angry. I would say, she was annoyed  
14 with it.

15 Q. Did you talk to her about that?

16 A. I talked to her later about it, yes.

17 Q. Later, when?

18 A. Later that day.

19 Q. Okay. First of all, do you know or did she  
20 tell you who had given her those flowers?

21 A. Yes.

22 Q. Who?

23 A. She said they came from Tom Capano.

1 Q. And what else did she say about them?

2 A. She said he was interested in a relationship  
3 and that wasn't something that she would get involved  
4 in.

5 Q. Did you see the flowers later?

6 A. Yes. They were in the garbage.

7 Q. In the trash?

8 A. Yes.

9 Q. At some point -- during that time after  
10 Valentine's Day did Tom Capano continue to call her?

11 A. There was a period of time, yes, where he  
12 continued to call, however, Anne Marie wasn't answering  
13 the calls.

14 Q. How did that work?

15 A. Well, usually when he called I would either  
16 buzz back to her and let her know that he was on the  
17 phone or I would slip her a note and let her know that  
18 he was on the phone, and she would usually answer the  
19 call. But there was some period of time where she was  
20 not answering the calls and she just said to me take a  
21 message.

22 Q. And do you know about when that period was?

23 A. Well, it was after the roses incident. So, it



1 Q. Do you have any children?

2 A. Yes, I do.

3 Q. Do you have a daughter?

4 A. Yes, I do.

5 Q. How old is she?

6 A. Four months.

7 Q. What is her name?

8 A. Anne Marie.

9 Q. Did you know Anne Marie Fahey?

10 A. Yes, I did.

11 Q. What kind of relationship did you have with  
12 her?

13 A. We were very close friends.

14 Q. And when did you first become friends with her?

15 A. I first met her in 19 -- in the summer of 1988.

16 Q. Where did you meet her?

17 A. At the shore in Sea Isle City, New Jersey.

18 Q. Is Sea Isle near Stone Harbor?

19 A. Yes, it is.

20 Q. Where did you live in 1998?

21 A. I lived in Philadelphia, the city of  
22 Philadelphia.

23 Q. And how did you meet Anne Marie in Sea Isle?

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1 A. Through a mutual friend. We had a house at the  
2 shore together, about five girls, and I was friends with  
3 one of my friends that were in the house at the shore.

4 Q. Did you spend, after that summer of 1988, other  
5 summers with Annie at the shore?

6 A. Yes, I did.

7 Q. Always in Sea Isle?

8 A. There was one year we had a house in Avalon,  
9 but it was either Sea Isle or Avalon.

10 Q. By the summer of 1994, how would you have  
11 characterized your relationship with Annie?

12 A. We were very close friends.

13 Q. You spent that summer together?

14 A. Yes, we did.

15 Q. How often did you see each other then during  
16 the summer?

17 A. Every weekend.

18 Q. So every weekend you would meet at the shore?

19 A. Yes.

20 Q. Did you have a house together that summer?

21 A. Yes, we did.

22 Q. Who else was in the house?

23 A. Eileen Duffy, Annie and myself.

1 Q. Did you maintain contact with her throughout  
2 '94 through June 27, 1996?

3 A. Yes, we did.

4 Q. And tell us about the frequency of your contact  
5 with Annie.

6 A. During the summers we would talk very  
7 frequently because we were planning where to meet and  
8 when to go to the shore. I would talk to her almost on  
9 a daily basis.

10 In the winter we would probably communicate  
11 once a week, sometimes twice a week through the  
12 telephone.

13 Q. Were you confidants?

14 A. Yes, we were.

15 Q. What kind of general topics did she confide in  
16 you about?

17 A. She told me about her different relationships,  
18 we talked about work, we talked about, personally,  
19 almost about everything.

20 Q. You knew she had an eating disorder?

21 A. Yes, I did.

22 Q. Did you have discussions about that? Extensive  
23 discussions about that?

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1 A. Yes, we discussed it.

2 Q. Do you know the defendant, Tom Capano?

3 A. Yes, I do.

4 Q. When did you first hear about the defendant?

5 A. In the summer of 1994 when I-- when Annie,  
6 Eileen and myself had a house at the shore. Annie was  
7 mentioning Capano's name and she confided with me that  
8 summer that they were involved.

9 Q. Now, before she told you she was involved with  
10 him, had she already referred to him?

11 A. Yes.

12 Q. And what was your initial understanding about  
13 the relationship between Annie and the defendant?

14 A. My initial understanding is that they were  
15 friends. That he would take her out to lunch  
16 occasionally. It was somebody that Annie was mentioning  
17 in conversation with me.

18 Q. How does she refer to him?

19 A. As Tommy.

20 Q. When you first heard about Tommy in the summer  
21 of 1994, based on what you said, was it your  
22 understanding that their friendship had, or whatever  
23 relationship they had, had been going on for some time?

1 A. Yes, I thought it had been going on for some  
2 time.  
3 Q. And you said eventually she acknowledged that  
4 she was involved with him?  
5 A. Yes.  
6 Q. You mean that they had an affair?  
7 A. Yes.  
8 Q. What did she say about the defendant to you?  
9 How did she talk about him that summer of '94?  
10 A. That he was a very successful lawyer in  
11 Wilmington who was taking her out to dinners and taking  
12 her out to lunch and that he was treating her like a  
13 princess and pretty much that was it.  
14 Q. Other than dinners, did she say why he treated  
15 her like a princess? Were there specific things she  
16 referred to?  
17 A. He was buying her gifts and she was able  
18 to-- she felt like she was able to tell him her secrets,  
19 and so she was -- I think that she kind of thought of  
20 him maybe as a father figure that she could share a lot  
21 with him.  
22 Q. Did she tell you she loved him?  
23 A. Yes.

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1 Q. Did she tell you he was married?  
2 A. Yes.  
3 Q. What did she tell you about that?  
4 A. She was very upset about it. It was a very  
5 difficult situation for her because he was married with  
6 four children, and Annie is a Catholic and committing  
7 adultery is something that is against our religion. So  
8 it was a very difficult struggle for her.  
9 Q. Did she specifically talk about the fact that  
10 her Catholic faith did not approve of this type of  
11 conduct?  
12 A. Yes.  
13 Q. Did she have any fears she expressed at that  
14 point about the relationship?  
15 A. Well, she was afraid that whether it could go  
16 somewhere. She was not sure because he was married.  
17 But she didn't express any fears then, no.  
18 Q. Did you ever meet Tom Capano?  
19 A. Yes, I did.  
20 Q. When did you meet him?  
21 A. It was in the fall of '94.  
22 Q. Where?  
23 A. At DiLullo's Restaurant in center city

1 Philadelphia.  
2 Q. Who was at the dinner?  
3 A. Annie, Capano and myself.  
4 Q. Who arranged the dinner, as far as you knew?  
5 A. Well, Annie called to ask me to go to the  
6 dinner, but it was Capano's idea, according to Annie.  
7 Q. And did she tell you why Capano-- or why the  
8 defendant wanted to meet?  
9 A. Because Annie had told him a lot about me, and  
10 we were very close at that point, and he knew that Annie  
11 was telling me about their relationship, so he said that  
12 he wanted to meet me.  
13 Q. Did you know whether, back then, any of Annie's  
14 other friends knew about the fact she was having an  
15 affair with the defendant?  
16 A. I didn't think anybody else knew.  
17 Q. Was it something you talked about a lot?  
18 A. Yes, we did.  
19 Q. At the dinner at DiLullo's?  
20 A. DiLullo's.  
21 Q. How did the defendant and Annie behave towards  
22 each other?  
23 A. They acted very much like a couple, they were

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1 holding hands and, you know, they kissed across the  
2 table, so they seemed very much like a couple.  
3 Q. You spent the summer of 1995 with Annie?  
4 A. Yes.  
5 Q. In making arrangements for that summer, did  
6 Annie express to you any concerns that she had?  
7 A. Yes.  
8 Q. Now, tell us what those concerns were.  
9 A. We were getting a house at the shore, Annie and  
10 myself, with about 10 other people that we did not know.  
11 It was arranged through a man at work that Annie worked  
12 with, and he had a house at the shore with maybe five  
13 other men and three or four other women. So Annie was  
14 upset because she didn't think Capano would want her  
15 going to the house at the shore where there was going to  
16 be other men present, she thought he would be very much  
17 against that.  
18 Q. Did she tell you she felt that way because of  
19 anything that the defendant had said to her?  
20 A. Well, he flat out said to her he did not want  
21 her going to the house at the shore.  
22 Q. Did she end up going to the beach that summer?  
23 A. Yes, we did.

Q. Did she go every weekend?

A. No, we rarely went to the beach.

Q. Why did she only rarely go?

A. Because we were not that comfortable in that house because we didn't know any of the other people. And also because there was fights about us, between and Capano and Annie. They would fight because she was going to this house at the shore and we didn't know where we would be sleeping, if we would be sleeping on the floor. And there was five or six single guys at the house, so it was always a problem for her because she would get-- she was given a hard time from Capano about it.

Q. Do you recall a specific incident where you were waiting for her at the beach and she didn't show?

A. Yes.

Q. Would you tell us what happened?

A. I was at a mutual friend of ours house waiting to meet Annie before we went to the house at the shore because we would always go together. And we were supposed to meet at noon at the Ford's house and she wasn't there, and she wasn't there at 1:00, wasn't there at 2:00, so I kept calling her and I would get her

anticipated the reaction of her family would be?

A. Yes. She thought her family would be extremely upset if they ever found out she was involved with him. That was a very big concern for her, she did not want to upset her family.

Q. Were there any characteristics of the defendant that she cited as making her be confused about her love for him and yet her doubts?

A. Yes. Well, the defendant was buying her-- was explaining to her what he could offer her in this life. He could offer her anything she wanted, so that confused her, because she was confused about the social status and whether this was something that she really wanted, and having the comfort level of not having to worry about money anymore, that was something that was always kind of out there.

Q. Did she say in '95 that she thought the defendant was controlling at all?

A. Yes.

Q. Was that kind of a recurrent theme that she struck with you?

A. Yes.

Q. Did she say whether or not there was any

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answering machine. And finally at maybe 4:00 or 5:00 she called me at the Ford's house to say that Capano had just left and they had had a huge fight because he did not want her going to the shore. And he had brought over wine and salmon, and things for her apartment, and then this fight ensued and she was too exhausted to make the trip to the shore.

Q. What did she tell you during the summer of '95 about her feelings for the defendant?

A. She was in love with him, but she was confused.

Q. And did she tell you, specifically, the sources of her confusion?

A. Yes.

Q. What did she tell had you?

A. She didn't think -- because he was married with four children, she didn't think the relationship could really go anywhere. And she was concerned that if they did have a relationship that she would never come first in his mind because he has four children. And also she didn't think he would be able to fit in with our friends socially, because he was much older than she was, so that concerned her very much.

Q. Did she ever say anything about what she

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discussion between Annie and the defendant about the possibility that he would leave his wife?

A. Yes.

Q. What did she tell you about that?

A. That he was talking about leaving his wife and Annie was against that because she did not want to be responsible for him leaving his family. And she was very adamant that if he was going to do that it had to do nothing with her.

Q. Now, do you know when the affair between Mr. Capano and Annie ended?

A. I would say it ended in the fall of 1995.

Q. About when?

A. About September, August or September.

Q. And who ended it?

A. Annie.

Q. She told you that?

A. Yes, she did.

Q. What did she tell you about Mr. Capano's reaction about the break up?

A. He was very upset.

Q. Can you be more specific? Can you trace his reaction chronologically from the August or September

1 time through the fall of '95, based on what Annie told  
2 you?

3 A. Well, it was right around that time, in  
4 September, I believe, that he did leave his wife, so he  
5 was very angry that she did not want to see him anymore  
6 at that point in time. So it was-- she was struggling  
7 because he was very angry, and saying that he left his  
8 wife and now it was their time to be together, and he  
9 was pretty obsessive at that point.

10 Q. You say he became obsessive at that point?

11 A. Yes.

12 Q. About when did she tell you about this  
13 obsessive behavior?

14 A. In the fall, October, November.

15 Q. Did she give you specific examples of things  
16 she did that she or you viewed as obsessive?

17 A. Yes.

18 Q. Tell us about those things.

19 A. He would call and leave maybe 15 messages on  
20 her answering machine in a two-hour period of time, that  
21 she had to talk to him, why wasn't she calling him back,  
22 that he needed to talk to her.

23 He also, at one point, tried to remove all of

1 A. Yes.

2 Q. What did Annie tell you about that?

3 A. Annie and I had talked about going to Spain  
4 together, we had talked about it for a couple of months.  
5 So for Christmas Annie said Capano had given her a plane  
6 ticket to Spain and said that he was talking about  
7 making reservations at all the hotels for her to stay in  
8 and it was something she did not want. She did not want  
9 to accept that gift from him.

10 Q. In this fall, into winter, how often were you  
11 talking about these obsessive types of behavior with  
12 Annie?

13 A. Very often.

14 Q. Every week?

15 A. I would say every week.

16 Q. On the e-mails you mentioned, did you ever see  
17 any e-mails?

18 A. No.

19 Q. Did she ever read one to you?

20 A. Yes.

21 Q. What was your recollection of it or what is  
22 your recollection of the e-mail she read to you?

23 A. I can't mention anything specific that was in

1 the gifts that he had given Annie from her apartment  
2 because he didn't want another man watching the TV that  
3 he had given her, the clothes-- seeing Annie wear the  
4 clothes that he had given her, so he removed a lot of  
5 those things from her apartment.

6 Q. Did she tell you when this apartment incident  
7 occurred?

8 A. I believe it was around November.

9 Q. Did she tell you anything about e-mails?

10 A. Yes. He would e-mail her at work all the time,  
11 and they were kind of obsessive e-mails.

12 Q. What did she tell you about it that makes you  
13 say they were kind of obsessive?

14 A. Would be upset that she wouldn't see him or  
15 wouldn't talk to him. At one point he threatened to  
16 commit suicide because he said he couldn't live without  
17 her. So there was a lot of pressure on Annie because he  
18 was saying -- There was a lot of pressure on Annie. He  
19 was saying I left my wife so we could be together. So  
20 there was a lot about the e-mails.

21 Q. Do you know anything about Mr. Capano  
22 purchasing a ticket for Annie to go to Spain around  
23 Christmas time in 1995?

1 the e-mail. But my recollection of the e-mail is that  
2 it sounded very juvenile. It was-- we would both talk  
3 about, it is shocking that he won't accept the fact that  
4 you don't want to see him anymore. Because it was kind  
5 of bantering, going on and on and on, two page e-mails.  
6 And Annie and I would discuss it would seem almost  
7 juvenile.

8 Q. In the fall and into, let's say, January of  
9 '96, did Annie ever tell you she was physically afraid  
10 of the defendant?

11 A. No.

12 Q. Did she ever indicate to you at that time  
13 anything she was thinking about doing as a result of his  
14 conduct?

15 A. Yes. She felt she had to escape. She was very  
16 aware that the obsessiveness of it was weighing very  
17 heavily on her shoulders. And sometimes she said I feel  
18 like I have to move out of the state to get away from  
19 him.

20 Q. You talked a lot with Annie over the years, I  
21 take it, about her relationships?

22 A. Yes.

23 Q. And you said eating disorder?



1 A. Yes.

2 Q. Did you know anything about-- did she talk  
3 about her childhood?

4 A. Yes, she did.

5 Q. And how would you have assessed her feelings  
6 about her childhood and her difficulties with eating?  
7 What did she say to you?

8 A. Her childhood was something -- it was a very  
9 difficult childhood. And she felt -- she never wanted--  
10 I remember her making a statement that, "If I ever had  
11 to live through my childhood again I would slit my  
12 wrists."

13 It was a very difficult time for her. And her  
14 eating disorder came because she felt it was the one  
15 thing in her life that she felt she could control  
16 because she felt like her life had been so out of  
17 control as a little girl.

18 Q. Do you want to take a moment?

19 A. I'm okay.

20 Her weight was the only thing she felt she  
21 could of control. She wouldn't eat. She could control  
22 what she put in her mouth and how much she weighed, so  
23 that's why it became such an obsession with her.

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1 Q. This is something that you tried to monitor?

2 A. Yes.

3 Q. As your relationship developed?

4 A. Yes.

5 Q. Did she ever talk to you about the effects she  
6 thought the defendant had on her eating disorder?

7 A. I'm sorry. Can you repeat the question,  
8 please?

9 Q. Did she ever talk to you about what she-- Did  
10 she ever say to you whether there was any relationship  
11 in her mind between what the defendant would do to her  
12 and her eating disorder?

13 A. Not that I recall.

14 Q. She didn't talk to you -- when you said about  
15 control, you don't recall any conversation about where  
16 she thought his conduct made it worse?

17 MR. OTERI: Objection, your Honor, asked and  
18 answered.

19 MR. CONNOLLY: I will withdraw the question.

20 BY MR. CONNOLLY:

21 Q. Did she talk to you about her eating disorder  
22 and childhood upbringing?

23 A. Yes.

1 Q. Did she describe to you any occasions where she

2 thought the defendant played on her insecurities  
3 relative to those things?

4 A. Yes.

5 Q. Can you tell us specifically about those?

6 A. She had a problem with her background and the  
7 way her childhood was. And she said that the defendant  
8 would attack her insecurities and refer to her as white  
9 trash, or that she should be lucky that he's even going  
10 out with her because of who he is and what he could buy  
11 her and where she came from.

12 Q. Now, when she-- Were you aware of any  
13 relationships that she was involved in, other than with  
14 the defendant?

15 A. Yes.

16 Q. And in, let's start in September of '95, what  
17 did you become aware of as far as that?

18 A. She was dating Michael Scanlon.

19 Q. Did she talk to you about Scanlon?

20 A. Yes, she did.

21 Q. What did she tell you?

22 A. She was very excited about the relationship  
23 with Michael.

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1 Q. Did she talk about it until the end of June of  
2 '96?

3 A. Yes, she did.

4 Q. And did she talk to you about her aspirations  
5 with respect to the relationship?

6 A. Yes. She thought that there was definitely  
7 marriage potential with Michael. She was very excited  
8 about the way it was progressing. The Governor had  
9 introduced them and it had started out they would date  
10 once a week, or something, but it was becoming more  
11 serious as the winter was going on.

12 Q. Did she have any concerns about the  
13 relationship with Scanlon?

14 A. No.

15 Q. Well, were there any issues about it she  
16 discussed?

17 A. Yes.

18 Q. Can you tell us?

19 A. She was a little bit concerned because she  
20 didn't think it was progressing in a physical manner  
21 that way she thought maybe it would.

22 Q. She hoped for more physically?

23 A. Yes.

1 Q. How about emotionally?

2 A. No. The one thing she was afraid of with  
3 Michael was she was reluctant to share with him her  
4 eating disorder. So, emotionally on that, that was the  
5 one thing she was reluctant to share with him. But  
6 other than that they were emotionally moving along.

7 Q. Had she ever spoken to you about other men the  
8 way she talked about Scanlon?

9 A. Michael was the first one she was referring to  
10 as marriage potential, since 1988 with Paul Columbus,  
11 was the last time I had heard her talk about the  
12 marriage potential.

13 Q. And she had dated Paul Columbus for a number of  
14 years?

15 A. Yes.

16 Q. You mentioned that she didn't feel comfortable  
17 talking about the eating disorder with Michael Scanlon?

18 A. Yes.

19 Q. She talked to you about that?

20 A. Yes.

21 Q. Did she tell you whether she had told Scanlon  
22 about the eating disorder?

23 A. She mentioned it to him, but I don't think she

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1 went into the detail of the disorder.

2 Q. Of this?

3 A. Of this disorder. I don't think she went into  
4 the detail, but she might have mentioned it to him.

5 Q. Do you know whether she had talked to Michael  
6 Scanlon about the fact that she had had an affair with  
7 Tom Capano?

8 A. No, she did not.

9 Q. And she told you that?

10 A. Yes.

11 Q. Did she want to tell Michael?

12 A. No. She was afraid to tell Mike.

13 Q. Why was she afraid. What did she tell you?

14 A. She was afraid he would think less of her  
15 because of both of their religions, and she was afraid  
16 that he would think less of her for having an affair  
17 with a married man.

18 Q. Was she afraid the defendant would expose the  
19 fact that they had had an affair to Scanlon?

20 A. Yes, she was very afraid of that.

21 Q. Did she say whether the defendant had ever  
22 threatened to do that?

23 A. Yes.

1 Q. Do you recall a specific incident?

2 A. There was an event in Delaware that Annie was  
3 very excited about going to with Michael called -- I  
4 think it was called the Grand Gala. And Tom had  
5 threatened her that he was going to be there, and she  
6 was very afraid that he was going to expose their  
7 relationship at this event.

8 Q. Did she ever tell that you Mr. Capano had, in  
9 fact, told somebody about the affair?

10 A. Yes.

11 Q. Tell us about that.

12 A. She was very upset, because he told her that he  
13 told their parish priest that he had been involved with  
14 Annie, and Annie -- they went to the same church, the  
15 same parish. And Annie felt she could never go back to  
16 that church again because she was humiliated that the  
17 priest knew that she had had an affair with him.

18 Q. Annie turned 30 in 1996; is that right?

19 A. That's right.

20 Q. Did you to go her birthday party?

21 A. Yes, I did.

22 Q. Do you recall her talking to you about this  
23 birthday party before it happened?

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1 A. Yes.

2 Q. Now, it was supposed to be a surprise party,  
3 correct?

4 A. Yes.

5 Q. But she knew?

6 A. Yes.

7 Q. What did she tell you?

8 A. She knew that her sister Kathleen was having a  
9 surprise party for her and she was very-- she didn't  
10 know who was invited and she was very concerned that  
11 there was a possibility Tom would be invited to the  
12 party.

13 Q. What did you do as a result of her concern that  
14 she expressed?

15 A. I called Ginny Columbus who works in Annie's  
16 office, because I knew she knew who the guest list was,  
17 and I asked who was on the list.

18 Q. Was Tom Capano on the list?

19 A. No.

20 Q. Did you tell Anne Marie that?

21 A. Yes.

22 Q. At some point, did Annie say things to you to  
23 indicate that the relationship or that the obsessive

1 behavior of Mr. Capano had subsided?  
 2 A. Yes.  
 3 Q. About when was that?  
 4 A. I would say it was in the early spring.  
 5 Q. Of 1996?  
 6 A. Yes.  
 7 Q. And what did she tell you about this  
 8 relationship between the two of them at that point?  
 9 A. She felt that they had become, gotten to a  
 10 common level of friendship, a nice friendship, because  
 11 she felt that he had known so much about her, and they  
 12 had been very close and she was comfortable with the  
 13 friendship she thought had developed.  
 14 Q. Were you aware that they had stopped contact  
 15 for awhile just prior to this time?  
 16 A. Prior to this spring?  
 17 Q. Prior to when she told you she thought they had  
 18 come to friendly terms.  
 19 A. She said there was a quiet time where they were  
 20 not talking at all.  
 21 Q. Now, in the later spring, late May of 1996, you  
 22 saw Tom Capano?  
 23 A. Yes.

1 Q. He called you?  
 2 A. Yes.  
 3 Q. And where did you work?  
 4 A. Smith-Barney.  
 5 Q. Did he call you at work?  
 6 A. Yes.  
 7 Q. And where did you go to dinner with him?  
 8 A. At the Ritz-Carlton.  
 9 Q. And that's a hotel in Philadelphia?  
 10 A. Yes.  
 11 Q. Who was at the dinner?  
 12 A. Tom Capano and myself.  
 13 Q. Did he tell you when he made arrangements for  
 14 the dinner, why he wanted to get together?  
 15 A. Yes.  
 16 Q. What did he tell you?  
 17 A. He said he was in town for a partners meeting  
 18 and he was very concerned about Annie's health and he  
 19 wanted to discuss that with me.  
 20 Q. And how did the dinner go? What was, in fact,  
 21 let's say the main topic of conversation?  
 22 A. Annie was the main topic of conversation and  
 23 her health.

1 Q. Tell us how it came about.  
 2 A. I work in center city Philadelphia. And one  
 3 day I was at my desk and Tom Capano appeared in my  
 4 office. He does some work for another man in my office  
 5 and he appeared at my desk, so I saw him then.  
 6 Q. Had you seen him in between the 1994 dinner in  
 7 Philadelphia with Anne Marie and this occasion in May of  
 8 1996?  
 9 A. No.  
 10 Q. Did he come in unannounced?  
 11 A. Yes.  
 12 Q. You had no idea he was coming?  
 13 A. No.  
 14 Q. So you were surprised?  
 15 A. Yes.  
 16 Q. What happened?  
 17 A. So I got up and said hello to him. He said he  
 18 had just been in town and was doing work and maybe we  
 19 could get together sometime.  
 20 Q. And did you get together sometime?  
 21 A. Yes.  
 22 Q. Who made the arrangements to get together?  
 23 A. He did.

1 Q. And who raised that?  
 2 A. He did.  
 3 Q. And what did he tell you?  
 4 A. That I was going to be shocked when I saw her  
 5 because she has gotten so skinny. And that he was very  
 6 concerned that she was in serious danger. And I also  
 7 was very concerned that she was in danger, so I wanted  
 8 to discuss it with him. And he said that he thought  
 9 possibly we should consider some kind of intervention  
 10 for her to get her into a treatment program or do  
 11 something before it got any worse.  
 12 Q. And this treatment intervention program that  
 13 you talked about was a type of commitment? In other  
 14 words, she would be committed to the hospital, is that  
 15 what your understanding was?  
 16 A. Yes.  
 17 Q. What was your reaction to that?  
 18 A. I said to him I was just as concerned. I had  
 19 been concerned about Annie's health because I knew she  
 20 was getting very skinny. And I said I thought we should  
 21 call Robert and bring it to her brother Robert's  
 22 attention and let him know that we thought that she had  
 23 a serious problem.

Q. And what was Mr. Capano's reaction to that?

A. He said don't call Robert and let's think about it some more before we do anything.

Q. Did he indicate to you or tell you about what he had done with respect to her eating disorder?

A. Yes.

Q. What did he tell you?

A. He said that he had talked to a friend of his who was a doctor who specialized in eating disorders, and she, the doctor, had recommended Michelle Sullivan, who Annie was seeing as a therapist. So, he said he found Michelle for Annie and was paying for Michelle -- for Annie to see Michelle. And he said that Annie had gotten two books on eating disorders, one that she had given to Capano and one that she had given to Robert. And he said that he read the entire book on the first night that Annie gave it to him, and she definitely has the eating disorder.

Q. Did he say what Robert had done?

A. He said that Robert hadn't even read it.

Q. Did he compare his efforts to help Annie with other persons' efforts?

A. Yes.

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Q. What did he say?

A. He said that he was the only one who was doing anything for her. That he was buying her groceries, constantly bringing her Gatorade and bananas to bring up her electrolytes, and tried to keep her fed and tried to make sure she was eating correctly.

Q. Did he tell you what his feelings were for Anne Marie at that point?

A. Yes, he said that he was in love with her.

Q. Did he say anything else?

A. He couldn't understand why she wouldn't agree to see him again.

Q. Did he say whether they had been sexually involved?

A. No. He said he hadn't touched her in months.

Q. Did he say anything about what he could provide for her that made it difficult for him to understand why she wouldn't return his love?

A. He said he had more money than he could spend in a lifetime and he could provide Annie anything that she wanted, including a Lexus and 10 bedroom house, and he just didn't understand why she was spending time with Michael when she could be with him.

Q. What did he say about Mike Scanlon at dinner?

A. He referred to Michael as a geek.

Q. Did he-- what did he say about the relationship?

A. He said that Annie didn't take him seriously at all, that it was just a front to look good in front of her family and she wasn't in love with him and didn't understand why she was wasting any time with Michael.

Q. Was that true?

A. No, that wasn't true.

Q. And you say that based on what Anne Marie told you?

A. Yes.

Q. Did he ask you whether he should change his behavior towards Annie?

A. He said, "Am I crazy? Should I back away from her?"

Q. What did you say?

A. I said, "Yes. I think you should back away from her."

Q. And what was his reaction to that; do you recall?

A. I don't recall.

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Q. Did you tell Annie what went on during the dinner, the next day or soon after?

A. Yes. I called her first thing the following morning.

Q. And what was her reaction?

Let me step back. Did you tell her everything he said at dinner?

A. No, I didn't tell her everything that he said.

Q. What things didn't you tell her?

A. I didn't say that he said that Michael was a geek.

Q. Why not?

A. I didn't want to hurt her or -- I don't know why I didn't, but I didn't tell her that.

Q. Did you tell her about the fact that Tom Capano said to you he was crazy bout her and in love with her and couldn't understand why she wouldn't return his love?

A. Yes.

Q. What was her reaction to that?

A. I don't recall her exact reaction.

Q. If you don't recall her words, did she-- what did she-- did she express any love for Tom Capano during



1 the conversation?

2 A. No.

3 Q. You had a second dinner with Tom Capano a week  
4 later; is that correct?

5 A. Yes.

6 Q. Who arranged that dinner?

7 A. He did.

8 Q. And where was this dinner?

9 A. The same place, at the Ritz-Carlton.

10 Q. Now, did he tell you why he wanted to have this  
11 dinner?

12 A. He said it was, that it was nice going out to  
13 dinner with me the week before and he was in town again  
14 for another meeting and why don't we get together again.

15 Q. What did he talk about during this dinner?

16 A. He talked -- we talked about his family and the  
17 summer was coming up. And he said his daughters were  
18 going to Europe. And he mentioned that his daughter had  
19 been sick. His one daughter had been sick and had some  
20 kind of brain surgery, and it was a very difficult time  
21 for him, but she was doing better.

22 We talked about his family, how his father had,  
23 I think, been an immigrant and how he made his children

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1 all millionaires, and how successful the family business  
2 was. He mentioned his siblings and his mother, he  
3 talked about, and we talked about Annie as well.

4 Q. First of all, had Annie ever told you anything  
5 about one of Mr. Capano's daughters having brain  
6 surgery?

7 A. Yes.

8 Q. And you said you talked about Annie, was it  
9 basically the same types of things he said at the first  
10 dinner?

11 A. Yes. It was basically the same, that he was  
12 concerned for her health and I would be shocked when I  
13 saw her. The following week I was going to see her and  
14 I would be shocked and it was basically the same.

15 Q. Did he tell you what Annie's feelings were  
16 about the fact that he was having dinner with you?

17 A. He said that when he told Annie he was taking  
18 me out to dinner again she said, "That's fine, but the  
19 next time I want to go with you."

20 Q. And did he say that he thought Annie was  
21 jealous of him dating somebody else?

22 A. Well, at that dinner he mentioned he had a date  
23 with another a woman who happened to work with

1 Smith-Barney in Delaware, and Annie said the thought of

2 him being with her made Annie sick to her stomach.

3 Q. Had Annie ever expressed to you jealousy that  
4 Tom Capano might see another woman?

5 A. No.

6 Q. At any time after September of '95, when Annie  
7 became involved with Mike Scanlon, did she ever say to  
8 you that she desired to be in a romantic relationship  
9 with the defendant?

10 A. No.

11 Q. Did she ever say she ever desired to be in a  
12 romantic relationship with anyone other than Michael  
13 Scanlon during that time frame?

14 A. No.

15 Q. You mentioned gifts that the defendant, during  
16 one of these dinners, talked about buying, a Lexus for  
17 Annie. Did he say he actually offered to buy her a  
18 Lexus?

19 A. Yes.

20 Q. Did you talk to Annie about this second dinner?

21 A. Yes.

22 Q. What did she tell you?

23 A. She said that the next-- if we decided to go to

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1 dinner again, if Tom asked me to dinner again she would  
2 like to go with us the next time.

3 Q. Was it your understanding that-- I will  
4 withdraw that question.

5 When did you next see Annie?

6 A. I saw Annie on June 8th at a wedding.

7 Q. Where was the wedding?

8 A. It was in media.

9 Q. And how did Annie look, physically?

10 A. She did not look well physically, very skinny.

11 Q. Did you speak with her at the wedding about  
12 Mike Scanlon?

13 A. Yes.

14 Q. What thoughts did she tell you on June 8th  
15 about Mike Scanlon?

16 A. She was very excited about their relationship.  
17 She thought it was moving in the right direction. She  
18 was falling in love with him.

19 Q. Was there anything in particular that  
20 during-- Do you remember anything about a kitchen?

21 A. Yes. That Michael was redoing his kitchen and  
22 Annie said it was like we were married because he let  
23 Annie pick out the kitchen tiles and Annie was helping

1 him decorate his house.

2 Q. Was Michael at the wedding?

3 A. No, he was not.

4 Q. And did Annie do anything? Did she try to call  
5 Mike, do you remember?

6 A. We went to the hotel before we went to the  
7 reception, and as soon as we got to the hotel room she  
8 called Michael to wish him luck. He was swimming in a  
9 marathon the next day, that's why he didn't go to the  
10 wedding because he had this swim. She called to wish  
11 him luck and wanted to let him know she was thinking of  
12 him.

13 Q. You saw her the next weekend, is that right,  
14 June 14th?

15 A. Yes.

16 Q. And that's a Friday?

17 A. That was a Friday.

18 Q. What did you do?

19 A. We, Annie and Michael had fixed me up on a  
20 blind date with one of Michael's friends, so we met at  
21 Annie's apartment, then we went to the Italian Festival  
22 in Delaware.

23 Q. How did it go?

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1 A. The Italian Festival?

2 Q. How did the blind date go?

3 A. That didn't work out.

4 Q. That's not your husband?

5 A. No, that's not my husband.

6 Q. Do you recall something, in relation to the  
7 defendant, happening at the Italian Festival?

8 A. We were walking through the crowd and Annie  
9 said, "Oh, my God, there he is."

10 And she was referring to the defendant, and so  
11 we quick turned around and walked the other way.

12 Q. Now, on that Friday, June 14th, did Annie tell  
13 you about something that had happened that week with the  
14 defendant?

15 A. Yes.

16 Q. And what did she tell you?

17 A. She said that she had passed out at work, she  
18 was faint at work and she called Capano to come pick her  
19 up.

20 Q. What was her reaction-- What was her demeanor  
21 when she told you this story?

22 A. She reluctantly shared that with me. She was a  
23 little sheepish about it to say she actually called him

1 to come pick her up.

2 Q. Do you remember when you last spoke with Annie?

3 A. Yes, I do.

4 Q. When was that?

5 A. It was the Wednesday before she was killed.

6 Q. And how did she sound on the phone?

7 A. She sounded great on the phone.

8 Q. What did she talked about?

9 A. We talked about her eating disorder, and she  
10 said that she had gained a couple pounds and she was  
11 very happy about that. And that she had cut the number  
12 of laxatives she was taking in half, so she felt she was  
13 getting better. And we talked about her relationship  
14 with Michael, and she felt that was going very well, and  
15 she was excited about that. It was a very upbeat  
16 conversation.

17 Q. When did you learn that she was missing?

18 A. Saturday night.

19 Q. So would have been June 29th?

20 A. Yes.

21 Q. Where were you?

22 A. I was at my brother Michael's house.

23 Q. And how did you learn that something was wrong?

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1 A. Susan Fahey called me to ask me if I knew where  
2 Annie was.

3 Q. Now Susan Fahey is Robert Fahey's wife; is that  
4 correct?

5 A. Yes.

6 Q. But you know her independent of the Faheys?

7 A. Yes. We went to high school together.

8 Q. She tracked you down at your brother's house?

9 A. Yes.

10 Q. What did she ask?

11 A. She asked me if I knew where Annie was, that  
12 she hadn't shown up for a dinner at their house and she  
13 was wondering if she knew where she was.

14 Q. You said what?

15 A. No, I didn't know where she was.

16 Q. What did you do after you hung up the phone?

17 A. My first thought that she was with Tom, so I  
18 called information to get his phone number in Delaware.

19 Q. And did you call the number?

20 A. I was given two numbers, so yes, I called one  
21 number.

22 Q. Who answered the phone when you called?

23 A. A young girl.

1 Q. And you stated that Tom took these gifts from  
2 Anne Marie because he didn't want anybody else to watch  
3 his TV or see her in clothes that he bought her?  
4 A. Correct.  
5 Q. But you didn't complete the answer when Mr.  
6 Connolly asked you. What happened to these gifts after  
7 Tom took them?  
8 A. He brought them back.  
9 Q. He brought them back. And he brought them back  
10 within like 15 minutes?  
11 A. Yes.  
12 Q. And Anne Marie accepted them back within 15  
13 minutes?  
14 A. Yes.  
15 Q. Now, you also testified that Anne Marie Fahey  
16 was not afraid of Tom Capano physically; is that  
17 correct?  
18 A. That's correct.  
19 Q. She had never told you that Tom Capano had  
20 abused her in any physical manner?  
21 A. Correct.  
22 Q. She thought he was a perfect gentleman; isn't  
23 that correct?

1 Q. And many, many -- most times people kiss and  
2 make up and it is better than ever?  
3 A. Right.  
4 Q. And in these particular cases that you talk  
5 about Tom playing on her insecurities, Anne Marie never  
6 left Tom, did she?  
7 A. She tried to.  
8 Q. She never stopped taking gifts from Tom?  
9 A. She tried to.  
10 Q. She didn't stop taking them, did she?  
11 A. In the end I think she did.  
12 Q. When?  
13 A. The tickets to Spain she didn't accept.  
14 Q. That was in December. Do you know she took  
15 gifts in January, February, March, April, May, June?  
16 A. The only gifts I heard about was from the  
17 defendant.  
18 Q. So Anne Marie never told you about the gifts  
19 she took?  
20 A. Told me about the air conditioner.  
21 Q. Never told you about the other gifts, \$460  
22 windshield?  
23 A. No.

1 A. Yes.  
2 Q. When you mentioned Tom wanted to take you to  
3 dinner she told you to go because he was a perfect  
4 gentleman; correct?  
5 A. Yes.  
6 Q. And perfect gentlemen don't abuse women;  
7 correct?  
8 A. Not that I know of.  
9 Q. Good. You said today, that Tom Capano played  
10 on Anne Marie Fahey's insecurities; is that correct?  
11 A. Yes.  
12 Q. Now, you-- you are married. You, I'm sure,  
13 have had relationships with other men that have broken  
14 up. Isn't it fair to say that in the human interplay  
15 between a man and a woman, when things get a little bit  
16 tough, people often say and do harmful, hurtful things?  
17 A. Is that fair to say?  
18 Q. Yeah.  
19 A. Yes.  
20 Q. People call each other names that they are  
21 sorry they ever call each other, say things about each  
22 other they wish they had never said?  
23 A. Correct.

1 Q. The peach dress she wore to the wedding, the  
2 pant suit she got from Talbots?  
3 A. She didn't wear a peach dress to the wedding.  
4 Q. Sorry. We are talking about a different  
5 wedding. I apologize.  
6 A. Oh.  
7 Q. The money to take to dinner when she was up  
8 here from Washington?  
9 A. She didn't tell me.  
10 Q. How about the money to go to the saloon with  
11 her family when she wanted to go and couldn't afford it?  
12 Thirty bucks when she was broke, because she  
13 went to Kid Sheleen's and was broke until payday, never  
14 told you about that?  
15 A. No.  
16 Q. Okay. Were you present at Anne Marie Fahey's  
17 house at any time on the weekend of her-- this search  
18 and report her disappearance?  
19 A. The weekend that she disappeared?  
20 Q. Yeah.  
21 A. No, I wasn't there that weekend.  
22 Q. Did you ever see any notes that Anne Marie  
23 Fahey had written to Tom Capano or Tom had written to

1 Anne Marie? Has anyone ever showed you those notes?

2 A.No. I have seen notes in the paper.

3 Q.In the paper. But the prosecution has never

4 shown them to you?

5 A.No.

6 Q.You also said that Michael Scanlon was the

7 first guy she had talked about with marriage potential

8 since Paul Columbus; correct?

9 A.Yes.

10 Q.Did you know that she dated a man down the

11 beach in the summer of '94 or '95 named Michael Lyons?

12 A.Yes.

13 Q.And did you know in her diary -- She met him

14 June 11th. Did you know in her diary June 15th she was

15 talking about marrying him?

16 A.I didn't know she wrote that in the diary. I

17 knew she was excited about Michael.

18 Q.Did she tell you she was thinking about

19 marrying him four days after she met him?

20 A.No. She did not tell me that.

21 Q.Now, you told us that Anne Marie Fahey had not

22 told Michael Scanlon about her relationship with Tom

23 Capano; correct?

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1 A.Yes.

2 Q.And she had also not told Michael Scanlon about

3 her anorexia?

4 A.She had mentioned it to Michael, but I don't

5 think she went into the detail.

6 Q.She told you she had mentioned to Michael about

7 her anorexia?

8 A.Yes.

9 Q.Now, you told the grand jury that, "Anne Marie

10 Fahey was afraid to death of Michael finding out her

11 relationship with Tom because Michael also is a devout

12 Catholic and if he found out she had been involved with

13 a married man that would be horrible in his eyes. He

14 would judge her and it would definitely affect their

15 relationship. She was very afraid of his finding out

16 about her relationship with Tom;" do you remember that?

17 A.Yes.

18 Q.In fact, her fear wasn't of Tom Capano, her

19 fear was of Michael Scanlon finding out about Tom

20 Capano; is that correct?

21 A.She was afraid Tom Capano was going to expose

22 her relationship to Michael.

23 Q.So she was afraid of Michael finding out and

1 she was afraid that Tom Capano would expose her to

2 Michael?

3 A. Correct.

4 Q. And to the best of your knowledge, she never

5 told you that Tom Capano exposed her to Michael?

6 A.No. He threatened to do that.

7 Q.He never did it, did he?

8 A.No.

9 Q.You also talked about a Grand Gala; do you

10 remember that?

11 A. Yes.

12 Q.And she was afraid that Tom Capano would tell

13 Michael about her-- their affair at the Grand Gala?

14 A. Correct.

15 Q.Tom Capano never went to the Grand Gala, did

16 he?

17 A.I don't know the answer to that.

18 Q.You know he never exposed her that evening,

19 don't you?

20 A. Yes.

21 Q.Tom Capano, you know, never exposed her to

22 anyone at any time?

23 A.I was told he exposed her to the parish priest.

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1 Q.Excuse me. I excluded the seal of the

2 confessional from that. Anyone other than a priest who

3 cannot repeat because he learns things under the seal of

4 confessional?

5 A. As far as I know.

6 Q.Now, she also told you that, "She was

7 comfortable that things got to a normal level with Tom."

8 This is towards the end of their relationship,

9 you say.

10 "She didn't think he was a threat anymore, as

11 far as telling Michael or exposing her. She thought

12 that they had come to a mutual agreement, and that they

13 were good friends and she was very comfortable with the

14 him at the end;" is that what you said?

15 A. Yes.

16 Q. And that's what you knew; isn't that correct?

17 That Anne Marie and Tom, at least during May and June,

18 had a comfortable relationship going?

19 A. Yes.

20 Q. You didn't know they were going out on dinner

21 dates Thursday nights?

22 A. No.

23 Q. Anne Marie didn't tell you that, did she?



1 A. No, she did not.

2 Q. You didn't know she was still accepting gifts  
3 from Tom?

4 A. No. Besides the air conditioner.

5 Q. Now, Tom Capano did business with a man in your  
6 office; did he not?

7 A. Yes, he did.

8 Q. Tom Capano had a stock account from a broker in  
9 your office?

10 A. I'm not aware that he had a stock account.

11 Q. But he did do business with a man in your  
12 office?

13 A. It was corporate business.

14 Q. And he would see you in the office?

15 A. He did see me in the office.

16 Q. And at one point he asked you if you would have  
17 dinner with him to discuss Annie's condition; is that  
18 correct?

19 A. That's correct.

20 Q. And he called you in May; is that correct?

21 A. Yes.

22 Q. Early May, late April he called you?

23 A. Yes.

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1 Q. About a dinner?

2 A. Yes.

3 Q. He wanted to talk to you. He was concerned  
4 about Annie and the weight she was losing and if you  
5 would consider getting together with him to discuss this  
6 with him after work, and you said yes, correct?

7 A. Correct.

8 Q. And you called Annie and told her, correct?

9 A. Correct.

10 Q. And Annie told you to go?

11 A. Yes.

12 Q. Told you he would be a perfect gentleman?

13 A. Yes.

14 Q. And he took you to the Ritz in Philly?

15 A. Yes.

16 Q. Pretty nice place?

17 A. Very nice place.

18 Q. You had dinner, few drinks, wine, nice dinner?

19 A. Yes.

20 Q. And the entire gist of this entire thing was  
21 Tom Capano was scared that Annie was going to die from  
22 this anorexia?

23 A. Yes.

1 Q. And he talked about you and he getting her into

2 a treatment program, 30 or 60 day program, where they  
3 would stop her from doing what she was doing to her  
4 body; do you remember that?

5 A. Yes, do I.

6 Q. And he said that Annie had gotten a book on  
7 anorexia and given it to Tom, correct?

8 A. Yes.

9 Q. And Tom had read the book and given it back to  
10 her and she had all the symptoms that were described in  
11 the book?

12 A. Yes.

13 Q. And he was afraid she would die and wanted you  
14 to do something to help her?

15 A. Yes.

16 Q. Now, when you talked to him about this, didn't  
17 you say or he say to you that if we do this Annie will  
18 never talk to either one of us again?

19 A. I honestly don't recall.

20 Q. But that is certainly something that was very  
21 possible, that Annie would be extremely incensed with  
22 you?

23 A. Yes.

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1 Q. May not talk to either you of you again?

2 A. Correct.

3 Q. Tom was willing to risk that?

4 A. If that's-- Yes.

5 Q. Now, he told you about buying her groceries;  
6 did he not?

7 A. Yes.

8 Q. And told you about buying Gatorade to get her  
9 electrolytes up -- I guess its electrolytes that they  
10 call them -- and bananas to get her potassium up, the  
11 things you do to keep people from dying from starvation.  
12 He was doing all the right things for her?

13 A. Yes.

14 Q. And he also told you he was paying for her  
15 treatment?

16 A. Yes.

17 Q. He didn't tell you he was only paying for part  
18 of it, not all of it?

19 A. No. He said he was paying for all of it.

20 Q. Okay. Now, at this second dinner -- you two  
21 had a second dinner a week or two later?

22 A. A week later.

23 Q. And it was more of the same, was it not, that

1 he was concerned about her and we ought to have a  
2 intervention and we have to do something, and he wanted  
3 to talk about getting a hold of Robert and perhaps doing  
4 something?

5 A. He didn't want me to get a hold of Robert.

6 Q. He thought you two should do it?

7 A. No. I wanted to get in touch with Robert and  
8 he said we shouldn't do that yet.

9 Q. Not yet. But he said not to do it, yes?

10 A. No. He said let's think about it some more.

11 Q. Now, at some point you told Annie about the  
12 second dinner with Tom Capano; did you not?

13 A. Yes, I did.

14 Q. And Annie said something to you to the effect  
15 that the next time you do it, I want to come, correct?

16 A. Correct.

17 Q. So she indicated to you that the next time you  
18 and Tom Capano were going to have dinner, she wanted to  
19 be there; is that correct?

20 A. That's correct.

21 Q. I'm advised that the jury couldn't hear me. I  
22 find that hard believe.

23 The next time you were going to have dinner

1 in Italy?

2 A. Pardon me?

3 Q. Couple of the girls being in Europe?

4 A. Yes.

5 Q. Told you that their rich Uncle Louie had taken  
6 them?

7 A. Yes.

8 Q. When Tom Capano was talking, did he say he has  
9 more money or did he say Louie?

10 A. He said I have more money.

11 Q. I, not Louie?

12 A. No.

13 Q. You are positive of that?

14 A. I am positive. Because I thought to myself why  
15 was he telling me that.

16 Q. Make more sense-- Well, never mind.

17 Now, at some point, you were at an Italian  
18 Festival; is that correct?

19 A. That's correct.

20 Q. Where is that Italian Festival?

21 A. It is in Wilmington.

22 Q. In Wilmington. And you were with a blind date?

23 A. Yes.

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1 with Tom she wanted to be present; correct?

2 A. Correct.

3 Q. Now, did she ever tell you, your best friend,  
4 that on May 23, at 3:28 p.m. she sent an e-mail to Tom  
5 Capano and said the following: "As for rescheduling  
6 with Kimmie for Thursday, please do not. I suppose that  
7 is selfish of me, but I don't feel like sharing. I will  
8 call before I leave. TC is running late, imagine that.  
9 Smile, Capano, I will get better, I promise."

10 Did she ever tell you she told Tom not to  
11 invite you?

12 A. No. She just told me the next time she wanted  
13 to be with us.

14 Q. And you didn't know that the next time you  
15 weren't with them?

16 A. No, I didn't know that.

17 Q. Now, Tom Capano, when he was with you, talked  
18 about his children, constantly?

19 A. Yes.

20 Q. He was very close to his four girls?

21 A. Yes.

22 Q. And at one time, at one of your dinners, he was  
23 talking about the girls being-- a couple of them being

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1 Q. And Anne Marie Fahey was with Michael Scanlon?

2 A. Yes.

3 Q. And you saw Tom Capano there?

4 A. I didn't see him.

5 Q. Anne Marie Fahey saw him?

6 A. Yes.

7 Q. And Tom Capano was with his kids; was he not?

8 A. Yes.

9 Q. And nothing happened. Tom Capano didn't come  
10 up and talk to you or bother you or anything else, did  
11 he?

12 A. No.

13 Q. Yet Anne Marie Fahey-- this was on the 15th of  
14 June or the 14th?

15 A. It was a Friday night.

16 Q. And she told you the prior Wednesday she had  
17 taken ill at work and she had called Tom Capano to come  
18 and pick her up; correct?

19 A. Correct.

20 Q. She had not called Michael Scanlon?

21 A. Correct.

22 Q. She had not called Kathleen Hosey. She hadn't  
23 called anyone but Tom Capano; correct?

1 A. Correct.

2 Q. And Tom Capano came and picked her up and  
3 brought her home and bought her groceries and things to  
4 help her get her strength back?

5 A. I don't know if he did that on that day or not.

6 Q. But he was doing it fairly constantly?

7 A. According to him, yes.

8 Q. And according to Anne Marie, she told you that,  
9 didn't she?

10 A. I don't recall her saying he brought groceries.

11 Q. You do recall she fainted at work, got sick,  
12 called Tom Capano to come get her to take her home and  
13 he did?

14 A. Yes.

15 Q. Now, you testified before this grand jury --  
16 you were asked, why didn't Michael Scanlon -- why didn't  
17 she call Michael Scanlon to pick her up. And your  
18 answer was, "She was afraid to death of Michael ever  
19 finding out that she had this problem. She didn't want  
20 him to think that she was sick. She was aware that she  
21 was taking too many laxatives at night and she wasn't  
22 eating, but she did not want Michael to know because it  
23 would make her look weak in his eyes. She was afraid it

1 ever finding out about this problem; did you not?

2 A. In my grand jury testimony, yes.

3 Q. So you said it?

4 A. I did say that, yes.

5 Q. Good. Now, did you know that Anne Marie had a  
6 dispute with her sister Kass, or Kathleen at one point  
7 in around this time period of May and June?

8 A. Yes.

9 Q. And you knew that the dispute was over a pant  
10 suit?

11 A. Yes.

12 Q. And as a friend of Anne Marie's, you were aware  
13 of the fact that she and her sister, although they  
14 certainly loved each other, had personality problems.  
15 They conflicted with each other on a number of occasions  
16 and number of different subjects; did they not?

17 A. Yes.

18 Q. It was kind of a contentious relationship  
19 between them?

20 A. At times it was contentious.

21 Q. You talked to Anne Marie Fahey on June 26th;  
22 isn't that correct?

23 A. Yes.

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1 might make him think less of her if she had this  
2 problem. Tom, she felt was, I guess, more like a father  
3 figure to her because they had this friendship and she  
4 could confide in him because she had the eating  
5 disorder." You answered that way?

6 A. I did say that.

7 Q. Yes?

8 A. Yes, I did.

9 Q. And you said that based on what she told you?

10 A. No. She didn't tell me that.

11 Q. So that was just what you assumed from your  
12 relationship with her, knowing her and seeing how she  
13 worked?

14 A. Yes.

15 Q. So she was scared to death that Michael would  
16 find out about her eating disorder?

17 A. She didn't want Michael to know the extent of  
18 it.

19 Q. If I quote you, "She was afraid to death of  
20 Michael ever finding out that she had this problem;" is  
21 that correct?

22 A. The seriousness of the problem, yes.

23 Q. You did say she was afraid to death of Michael

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1 Q. And during that conversation, you were told  
2 that Anne Marie had gained a couple of pounds and she  
3 had cut the amount of laxatives she was taking in half;  
4 is that correct?

5 A. Yes.

6 Q. And she told you everything was going good.  
7 There was a certain peace in her relationship with Tom;  
8 correct?

9 A. I don't think we discussed Tom in that  
10 conversation.

11 Q. Is it fair to say that that is a true  
12 statement, that there was a certain peace in her  
13 relationship with Tom?

14 A. Well, I didn't discuss that with Annie.

15 Q. Let me read to you from the grand jury  
16 testimony to see if you remember saying this: Question,  
17 "When did you last speak with Annie?"

18 Answer, "On the Wednesday before she  
19 disappeared."

20 Question, "That's Wednesday, June 26th?"

21 Answer, "Right."

22 "Where were you?"

23 "At work."

1 Q. When did you become separated?

2 A. Three years ago, over three years ago.

3 Q. Can you give us an approximate month?

4 A. September.

5 Q. That would be 1995?

6 A. '95.

7 Q. And the person from whom you are  
8 separated is?

9 A. Thomas Capano.

10 Q. He's the defendant in this case?

11 A. Yes.

12 Q. How long, including the time you've been  
13 separated, how long have you been married?

14 A. Including the time that we were  
15 separated?

16 Q. You're not divorced, are you?

17 A. No. 26 years.

18 Q. Where do you live?

19 A. 17th Street, West 17th Street.

20 Q. Okay. And the address?

21 A. 25 hundred West 17th Street.

22 Q. Is that a --

23 A. That's in Wilmington.



1 Q. -- corner?

2 A. Right on the corner of Greenhill and 17th  
3 Street.

4 Q. How long have you lived there  
5 approximately?

6 A. Twenty years.

7 Q. Do you have any children?

8 A. Yes.

9 Q. How many children?

10 A. Four.

11 Q. What are their names and -- if you know  
12 the ages. I know it gets hard sometimes.

13 A. Christine is 18, Katie is 16, Jenny will  
14 be 15 next week, and Alex is 13.

15 Q. Do they all live at home with you?

16 A. Yes, they do. My oldest daughter is in  
17 college, but she still comes home on holidays.

18 Q. She's away?

19 A. She started college this past September.

20 Q. Okay. And she's not local in college?

21 A. No, she's in New York.

22 Q. When you and the defendant became  
23 separated, did he leave the marital residence on 17th

1 Street?

2 A. Yes.

3 Q. Do you know where he went to live?

4 A. Um, he eventually ended up on Grant  
5 Avenue, the house at Grant Avenue.

6 Q. Was there a period where he was between  
7 the 17th Street address and Grant Avenue?

8 A. Yes.

9 Q. With whom did he stay then?

10 A. He stayed with his brother, Louis.

11 Q. Have you been to the house on Grant  
12 Avenue?

13 A. Just a couple of times.

14 Q. Did you go inside, or --

15 A. I went inside, yes.

16 Q. Did you have any particular arrangements  
17 as far as visitation with your children?

18 A. Um, we didn't have anything formalized.  
19 It was essentially he would see them on the weekend  
20 or he would drop by frequently to see them. It was a  
21 very informal arrangement.

22 Q. When he would see them on weekends, would  
23 that be at your residence, or would they have a --

1 this -- or the Supreme Court has ruled on this  
2 specifically.  
3 Mr. Maurer, as long as -- do I understand  
4 the State intends to introduce the statement and then  
5 examine the witness?

6 MR. CONNOLLY: Yes. I was going to play  
7 the tape he's authenticated. He said it was fair and  
8 accurate, that the transcript was. I was going to  
9 play the tape at this point.

10 MR. MAURER: We feel that gives a witness  
11 an added benefit on the witness stand to listen to  
12 his prior statements, although we certainly  
13 understand he's reviewed them in detail before  
14 testimony. But we think the law requires that he  
15 should be examined first about the events.

16 MR. CONNOLLY: Could I ask this? If we  
17 proceed that way, I presume I can ask him about the  
18 substantive statements that he gave, in other words.

19 THE COURT: Certainly.

20 MR. CONNOLLY: And then we could play the  
21 tape. But then I can ask him about the taped  
22 statement. For instance, if he wanted to clarify  
23 something he said on tape.

1 Q. Mr. Capano, what name do you go by?

2 A. Gerry.

3 Q. And do you have any siblings?

4 A. Yes.

5 Q. How many siblings do you have?

6 A. I have three brothers and a sister.

7 Q. And what are their names?

8 A. Thomas, Louis, Joey, and Marion.

9 Q. And Mr. Capano, I just ask, if you would,  
10 to please speak into the microphone.

11 A. Okay.

12 Q. Who is your oldest sibling?

13 A. My sister Marion..

14 Q. And who is next?

15 A. Then Tom.

16 Q. And how much older is Thomas Capano than  
17 you are?

18 A. I believe he's 13, 14 years older than I  
19 am.

20 Q. Now, I want to turn your attention to  
21 February 1996. Do you recall a conversation you had  
22 with your brothers -- your brother Thomas in February  
23 of 1996, or around February of 1996?

1 THE COURT: Absolutely.

2 MR. CONNOLLY: I can do that. I'll just  
3 do that.

4 THE COURT: Because I'm inclined to go  
5 with Mr. Maurer. I think there is some validity in  
6 saying that sitting and listening to your statement  
7 on the stand is probably -- prior to testifying about  
8 it, its contents, is probably reinforcing the  
9 testimony of the witness, and that is a procedure  
10 that the Court would not at this time like to  
11 sanction.

12 (Sidebar discussion concluded.)

13 MR. MAURER: I haven't had our -- having  
14 had our discussion at sidebar, there is no objection  
15 to the admissibility of these documents and tapes.

16 THE COURT: All right. They are admitted  
17 as State's Exhibits 77, 78, and 79.

18 THE CLERK: So marked.

19 (Whereupon State's Exhibit Nos. 77, 78  
20 and 79, tape, transcript of statement, grand jury  
21 proceeding, were received into evidence.)

22 THE COURT: Thank you. Mr. Connolly.

23 BY MR. CONNOLLY:

1 A. I do.

2 Q. What did your brother Thomas say to you  
3 during this conversation?

4 A. He asked to borrow money.

5 Q. How much money?

6 A. Eight thousand.

7 Q. Did he tell you why he wanted \$8,000?

8 A. He told me that two people were extorting  
9 him.

10 Q. Did he tell you anything about these two  
11 people that were extorting him?

12 A. There was a guy and a girl.

13 Q. Did he tell you what they were  
14 threatening to do for the money?

15 A. They were threatening to hurt his kids,  
16 ruin his career.

17 Q. Did you give him the money?

18 A. I did.

19 Q. Did you give him the money around the  
20 time of the conversation?

21 A. If not then, within the next couple of  
22 days.

23 Q. How did you get the money?

1 A. I wrote a check and went to the bank.  
 2 Q. Why didn't you give him a check?  
 3 A. He wanted cash.  
 4 Q. Did he pay you back?  
 5 A. He did.  
 6 Q. When?  
 7 A. Within a week or so afterwards.  
 8 MR. CONNOLLY: Your Honor, at this point,  
 9 I would move to admit State Exhibits 80 and 81.  
 10 THE COURT: Is there agreement on the  
 11 admission of these?  
 12 MR. MAURER: I believe so, Your Honor.  
 13 Just one second.  
 14 THE COURT: All right.  
 15 MR. MAURER: Without objection, Your  
 16 Honor.  
 17 THE COURT: Without objection, State's  
 18 Exhibits 80 and 81 are admitted into evidence.  
 19 (Whereupon State's Exhibit Nos. 80 and  
 20 81, check and deposit slip, were received into  
 21 evidence.)  
 22 MR. CONNOLLY: Your Honor, may I  
 23 approach?

1 A. 2-13-96.  
 2 Q. And for how much?  
 3 A. Eight thousand.  
 4 Q. And it references a check number, isn't  
 5 that right?  
 6 A. That's right.  
 7 Q. What check number does it reference?  
 8 A. 1666.  
 9 Q. And then the first document on this State  
 10 Exhibit is a check from your brother, correct?  
 11 A. That's right.  
 12 Q. What's the check number?  
 13 A. The same. 1666.  
 14 Q. And to whom is this check made out to?  
 15 A. Me.  
 16 Q. For how much?  
 17 A. Eight thousand.  
 18 Q. And whose the signature on the bottom  
 19 line of the check?  
 20 A. Tom's signature.  
 21 Q. And the date of that check is what?  
 22 A. I don't know if that's a four or not,  
 23 2-9-96.

1 THE COURT: You may.  
 2 BY MR. CONNOLLY:  
 3 Q. Mr. Capano, I'm going to show you State  
 4 Exhibit 80. Do you recognize that?  
 5 A. That's my check.  
 6 Q. It's your signature?  
 7 A. Yes.  
 8 Q. What's the date of the check?  
 9 A. 2-8-96.  
 10 Q. And the check is written to what?  
 11 A. Cash.  
 12 Q. For how much?  
 13 A. Eight thousand three hundred.  
 14 Q. What did you do with the other \$300?  
 15 A. Probably just used it for pocket money.  
 16 Q. I'm going to show you State Exhibit 81.  
 17 Do you recognize -- there are two documents on this,  
 18 is that right?  
 19 A. Yeah -- yes.  
 20 Q. And the bottom document is a deposit slip  
 21 from your account?  
 22 A. That's correct.  
 23 Q. And what's the date of the deposit?

1 Q. Now, sometime after this conversation  
 2 that you've told us about, did your brother talk  
 3 again about anything related to this extortion?  
 4 A. Yes.  
 5 Q. What did he ask you?  
 6 A. He asked me if he could borrow a gun.  
 7 Q. Did he tell you why he wanted the gun?  
 8 A. He said he was scared that the guy was  
 9 going to hurt him. He was afraid that the guy was  
 10 going to beat him up or hurt him, come to his house  
 11 and hurt him.  
 12 Q. What did you tell him?  
 13 A. I originally told him you should call the  
 14 police.  
 15 Q. Did you have any guns at that time?  
 16 A. Quite a few.  
 17 Q. What kind of gun did your brother ask to  
 18 borrow?  
 19 A. A handgun.  
 20 Q. What was your response to that?  
 21 A. I told him he should take a shotgun.  
 22 Q. Why did you tell him that?  
 23 A. Because it's better home protection.



1 Q. Why?  
2 A. Because you don't have to aim.  
3 Q. Was your brother familiar with guns?  
4 A. Not at all, that I know of.  
5 Q. And is a shotgun easier to use for  
6 somebody who is not familiar with guns, in terms of  
7 hitting their target?  
8 A. Yes.  
9 Q. When you suggested to your brother that  
10 he should use a shotgun, what was his response?  
11 A. He didn't want it. He wanted the  
12 handgun.  
13 Q. Did you give him a gun?  
14 A. I did.  
15 Q. What kind of gun?  
16 A. Ten millimeter Colt.  
17 Q. What kind of gun is that?  
18 A. It's a big handgun.  
19 Q. Where did you give it to him?  
20 A. In the room that my gun safe was in at  
21 that particular time.  
22 Q. And that's at your home?  
23 A. Yes.

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1 Q. Is there any particular reason why you  
2 gave him that handgun?  
3 A. No.  
4 Q. Did you show him how to use the gun?  
5 A. I did.  
6 Q. What did he do with it?  
7 A. He put it in the case that I gave him and  
8 that was it.  
9 Q. When did you next see the gun?  
10 A. When he gave it back to me.  
11 Q. About how long had he held it for?  
12 A. It was somewhere between February and May  
13 because he gave it to me before I went to the beach  
14 for the summer. I always go to the beach for the  
15 summer right around the middle of May.  
16 Q. So he gave you the gun back sometime  
17 before May?  
18 A. Yes.  
19 Q. Or before the middle of May?  
20 A. Excuse me?  
21 Q. Before the middle of May, before you went  
22 to the beach?  
23 A. Yes.

1 Q. How long had he kept the gun from when he  
2 took it from you until when he returned it,  
3 approximately?  
4 A. I would think a month or a month and a  
5 half.  
6 Q. What was the condition of the gun when  
7 your brother returned it to you?  
8 A. It was the exact same as I had given it  
9 to him.  
10 Q. Were you able to tell -- when you say  
11 that, were you able to determine whether or not the  
12 gun had been used?  
13 A. The gun had not been used.  
14 Q. And you say because it was in the same  
15 condition?  
16 A. Yes.  
17 Q. What about the condition?  
18 A. I clean guns and it was clean, very very  
19 clean, like I would have cleaned it myself, and all  
20 of the bullets were still in the clip.  
21 Q. When you gave it to him, had the clip  
22 been full?  
23 A. The clip was full but not in the gun.

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1 Q. So it hadn't -- the top bullet had not  
2 been put into the barrel of the gun, is that right?  
3 A. That's right.  
4 Q. And it was that way when he returned it  
5 to you?  
6 A. It was.  
7 Q. What did you do with this gun?  
8 A. I put it back in the safe then.  
9 Q. Do you still have it?  
10 A. No.  
11 Q. Where is it?  
12 A. I gave it to a guide friend of mine that  
13 I went hunting with, as a tip, which is not uncommon.  
14 Q. This is a guide who took you bear  
15 hunting?  
16 A. I've gone grizzly bear hunting with him  
17 and moose hunting.  
18 MR. OTERI: I didn't hear that last part.  
19 THE WITNESS: Grizzly bear and moose  
20 hunting.  
21 BY MR. CONNOLLY:  
22 Q. Now, did your brother ever talk to you  
23 about the possibility of using your boat?

1 A. He did.

2 Q. And when did that occur?

3 A. It was either when he gave me the gun  
4 back, or when he borrowed the gun from me. I'm not  
5 real clear exactly.

6 Q. What did he say to you about a boat?

7 A. He said that if either one of these  
8 persons that was threatening to hurt his kids were to  
9 hurt one of his kids and he was to do something to  
10 them, could he use the boat.

11 Q. Well, what was this "to do something"?

12 A. If they had hurt his kids and he was to  
13 kill them, could he use the boat.

14 Q. And what boat was he talking about?

15 A. 25 Hydra-Sport.

16 Q. Who owned that boat?

17 A. I did.

18 Q. Did your brother own a boat?

19 A. My brother, Thomas? No.

20 Q. Did you report this conversation you had  
21 with your brother to the police at the time?

22 A. No, I didn't tell the police because I  
23 didn't think he was serious, he was just blowing off

1 that you've talked about, or the statements that your  
2 brother made to you, your brother Thomas, did all of  
3 those occur before June 28, 1996?

4 A. Yes.

5 Q. And where were you on the morning of June  
6 28, 1996?

7 A. Would that be the Friday?

8 Q. Friday, June, 28, 1996.

9 A. I came out of my house at quarter of six  
10 to go to work.

11 Q. And where were you?

12 A. In the driveway, at 7 Emma.

13 Q. What did you see when you walked out on  
14 your driveway that morning?

15 A. My brother was in his black jeep in the  
16 driveway.

17 Q. This is your brother Thomas?

18 A. That's right.

19 Q. Now, were you normally up that early?

20 A. Yes.

21 Q. Why?

22 A. Well, you usually start between six and  
23 six-thirty.

1 steam. You know, I didn't think -- I didn't take  
2 anything from it.

3 Q. Did your brother ever ask you during this  
4 time if you could arrange for a person to be hurt?

5 A. He was afraid that the guy was going to  
6 hurt him and he asked me if I knew somebody that  
7 could break legs or, you know, beat this guy up, and  
8 I said that I might.

9 Q. Did you ever talk to anybody?

10 A. I did, but nothing ever came out of it.

11 Q. Who is the person you talked to about  
12 getting somebody's legs broken?

13 A. John. My friend, John.

14 Q. What's John's last name?

15 A. Burris. John told me he didn't know  
16 people like that anymore at that particular time.

17 Q. And you didn't report that to the police?

18 A. No, I didn't.

19 Q. And why not?

20 A. I didn't think he was serious. I just  
21 didn't think he was --

22 Q. I'd like to turn your attention to June  
23 28, 1996. First of all, all of the conversations

1 Q. What kind of work were you doing at the  
2 time?

3 A. I was part owner of a landscaping  
4 business, maintenance business.

5 Q. Now, what did you do when you saw your  
6 brother Thomas?

7 A. I walked over to him.

8 Q. And he was sitting in his car?

9 A. Yes, he was.

10 Q. Was the car running?

11 A. I think -- I believe it was, but I'm not  
12 sure about that.

13 Q. And how were you positioned in relation  
14 to him when you went up to him?

15 A. I leaned in the passenger side window.

16 Q. The front passenger side window?

17 A. Yes.

18 Q. And he was in the driver's seat?

19 MR. MAURER: Objection. Leading, Your  
20 Honor.

21 BY MR. CONNOLLY:

22 Q. Where was he?

23 A. He was in the driver's seat.

1 Q. What happened?  
2 A. He asked me if I could get ahold of the  
3 boat.  
4 Q. What did you say?  
5 A. I asked him why, that, you know -- I  
6 believe I said, "Did you do it?" And then he nodded  
7 at me, and then he said, "Can you help me?" And I  
8 said, no, I didn't want to get involved.  
9 And then he said he had nowhere else to  
10 turn to, and had nobody else -- nowhere else to go,  
11 and I eventually agreed to help him.  
12 Q. Did you say anything else besides simply  
13 you didn't want to be involved?  
14 A. Yes, I said I had a great life and I  
15 didn't want to ruin my life, and I believe that's it.  
16 I -- I'm sorry.  
17 Q. You said that when you said, "Did you do  
18 it?" he nodded. In what way, in what fashion, did he  
19 nod?  
20 A. Yes.  
21 Q. And what specifically did he say to you  
22 when you said you had a great life and you didn't  
23 want to get involved?

1 A. He said he had nowhere else to go. He  
2 said, "Don't leave me flat. Don't leave me hanging.  
3 I need you, bro," and that was it.  
4 Q. And what did you understand when he asked  
5 if he could go for a boat ride?  
6 MR. MAURER: Objection, Your Honor;  
7 relevancy as to what he understood. He can testify  
8 as to what was told him.  
9 MR. CONNOLLY: I think it's relevant.  
10 He's going to explain his conduct, Your Honor. It  
11 explains the context of the conversation.  
12 THE COURT: All right. I'll allow the  
13 question. The jury should not infer that at this  
14 particular stage the defendant had told this witness  
15 anything more than he has testified to. The witness  
16 is going to respond in a certain way. Mr. Connolly  
17 is exploring the reasons for that response.  
18 BY MR. CONNOLLY:  
19 Q. What did you understand when your brother  
20 asked you if you could go for a boat ride that  
21 morning?  
22 A. That he had hurt one of the people that  
23 was extorting him or threatening his kids.

1 Q. Did you agree to go with him?  
2 A. Not at first.  
3 Q. Eventually you did?  
4 A. I did.  
5 Q. And where were you when you agreed to go  
6 with him?  
7 A. In the driveway, in my driveway.  
8 Q. About how long did this conversation take  
9 on your driveway?  
10 A. Couple minutes.  
11 MR. OTERI: I'm sorry, I didn't hear  
12 that.  
13 THE WITNESS: Couple minutes.  
14 BY MR. CONNOLLY:  
15 Q. Once you agreed to go with him on the  
16 boat ride --  
17 A. Excuse me.  
18 Q. Once you agreed to go with him on the  
19 boat ride, what did you discuss?  
20 A. I told him I had to get my men set up and  
21 that, excuse me, that he asked me to meet him.  
22 Q. Where did he ask you to meet him?  
23 A. At his Grant Avenue house.

1 Q. Did he leave at that point?  
2 A. Yes.  
3 Q. What did you do?  
4 A. I went and picked up one of my employees  
5 and went out to the job and got them all started, and  
6 then I left to go meet Tom.  
7 Q. Now, who is the employee that you went to  
8 pick up?  
9 A. Tommy Pitts.  
10 Q. Thomas Pitts?  
11 A. Yes.  
12 Q. Where did Thomas Pitts live that summer?  
13 A. The apartments on Foulk Road. I'm not  
14 real clear of the name -- they're right across from  
15 my brothers' offices.  
16 Q. This is your brother Louis' offices?  
17 A. Louis and Joseph.  
18 Q. And what road is it on?  
19 A. Foulk Road.  
20 Q. Now, did you have -- had you picked up  
21 Tom Pitts before that morning?  
22 A. Just about every other morning.  
23 Q. And do you recall today specifically

1 picking him up and speaking with him on June 28th,  
 2 Friday, 1996?  
 3 A. Yeah, I remember calling his apartment,  
 4 because he was late, and he wasn't down there, and,  
 5 yeah -- yes.  
 6 Q. And what phone would you use to call him?  
 7 A. My cell.  
 8 Q. Your cell phone?  
 9 A. Yes.  
 10 Q. Is this a portable phone?  
 11 A. It is.  
 12 Q. And when would you call him?  
 13 A. On my way to his place to make sure that  
 14 he would be sitting down there waiting.  
 15 Q. And then you would pick him up?  
 16 A. That's correct.  
 17 Q. Where did you bring him?  
 18 A. Cavalier's, I believe, that day. Yes,  
 19 Cavalier's. We were trimming bushes.  
 20 Q. Cavalier's is an apartment complex?  
 21 A. That's correct.  
 22 Q. Who owns it?  
 23 A. My family.

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1 Q. Where is it located?  
 2 A. Churchman's Road.  
 3 Q. About how far away from Foulk Road is it,  
 4 minutes-wise?  
 5 A. Minute-wise?  
 6 Q. Approximately.  
 7 A. Ten, fifteen, tops.  
 8 Q. When you got to Cavalier's Apartments  
 9 with Tom Pitts, what did you do?  
 10 A. I -- I saw the other men already working,  
 11 and I dropped Tom off, and I may have told Terry that  
 12 I had to go, and I left.  
 13 Q. Now, Terry is who?  
 14 A. One of my business partners, Terry  
 15 Hannig.  
 16 Q. And when you left Cavalier's, where did  
 17 you go?  
 18 A. To meet Tom.  
 19 Q. And this is Tom, your brother?  
 20 A. Yes.  
 21 Q. Where did you meet him?  
 22 A. Grant Avenue.  
 23 Q. And had you been to Grant Avenue before?

1 A. Yes.  
 2 Q. This is his house at Grant Avenue you'd  
 3 been to?  
 4 A. Correct.  
 5 Q. How did you get inside the house that  
 6 morning?  
 7 A. Through the garage.  
 8 Q. Did you -- where did you park?  
 9 A. On the left side of the garage.  
 10 Q. Were any garage doors open?  
 11 A. Yes.  
 12 Q. Which?  
 13 A. I believe it was the right one. Kay's  
 14 Suburban was backed up to it.  
 15 Q. Now, you said Kay's Suburban. Who is  
 16 Kay?  
 17 A. My brother's wife.  
 18 Q. And had you seen the Suburban before?  
 19 A. Yes.  
 20 Q. What color was it?  
 21 A. Blue, dark blue.  
 22 Q. Where was the jeep; do you know?  
 23 A. Tom's jeep? No, I don't know.

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1 Q. Are you certain when he picked you up  
 2 that morning he was in his jeep?  
 3 A. He didn't pick me up. He was in the jeep  
 4 at my driveway, and then when I went to Grant Avenue,  
 5 the Suburban was there.  
 6 Q. And how is the Suburban positioned in the  
 7 driveway?  
 8 A. It was backed up.  
 9 Q. What did you do after you parked your  
 10 car, or your truck?  
 11 A. Got out and went in through the garage.  
 12 Q. What did you see in the garage?  
 13 A. I saw a cooler with a chain wrapped  
 14 around it and a rolled-up rug, and that's -- just  
 15 normal garage stuff.  
 16 Q. Now, what kind of condition was this  
 17 cooler in?  
 18 A. Looked to be new.  
 19 Q. What size was it?  
 20 A. It was a big Igloo cooler, approximately  
 21 160 some quarts, fishing cooler kind of deal.  
 22 Q. You said a fishing cooler. Are you a  
 23 fisherman?



1 A. Yes.  
 2 Q. Tell us, what did you mean by this, a  
 3 fishing-type cooler?  
 4 A. Just a big cooler. Just a big square  
 5 cooler.  
 6 Q. Have you ever owned a cooler that size?  
 7 A. Yes.  
 8 Q. What did you use it for?  
 9 A. Bait or fish.  
 10 Q. What kind of condition was the chain that  
 11 was wrapped around the cooler?  
 12 A. Looked to be new.  
 13 Q. How about the lock, the --  
 14 A. The same.  
 15 Q. How long was this rug?  
 16 A. Excuse me?  
 17 Q. How long was the rug, the carpet?  
 18 A. I don't know. It was rolled up.  
 19 Q. How long was it when it was rolled up?  
 20 A. I would say ten to 15 feet long.  
 21 Q. Were you able to tell what color of a rug  
 22 the carpet was?  
 23 A. No. It was rolled up.

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1 Q. Was anybody at the house when you  
 2 arrived?  
 3 A. I didn't see anybody.  
 4 Q. At some point, did you see your brother?  
 5 A. Oh, I saw my brother Tommy, yes.  
 6 Q. So was anybody at the house when you  
 7 walked in the garage?  
 8 A. Yes, my brother Tommy was there.  
 9 Q. Do you recall how he was dressed?  
 10 A. He had a T shirt on and a pair of shorts.  
 11 Q. At that time did your brother have any  
 12 facial hair?  
 13 A. Yeah, I believe he had a beard at that  
 14 time.  
 15 Q. What did your brother Tom say to you when  
 16 you saw him at Grant Avenue?  
 17 A. He wanted to put the cooler in my truck,  
 18 and I said no.  
 19 Q. Why?  
 20 A. Because I just didn't want to do it.  
 21 Q. This was a pick-up truck that you had?  
 22 A. That's right.  
 23 Q. But what did you do with the cooler?

1 A. Put it in the back of the Suburban.  
 2 Q. How did you lift the cooler from the  
 3 garage into the Suburban?  
 4 A. It has handles on it, big handles.  
 5 Q. Who carried it?  
 6 A. The both of us.  
 7 Q. About how heavy was it?  
 8 A. I don't know. I mean it was heavy enough  
 9 where two people carried it.  
 10 Q. Were there any noises coming from the  
 11 cooler?  
 12 A. Sounded like ice was inside the cooler.  
 13 Q. What about the rug, was anything done  
 14 with it?  
 15 A. No.  
 16 Q. Was anything said about the rug?  
 17 A. He wanted me to take the rug with him,  
 18 and I told him no, we couldn't take the rug out on  
 19 the boat because it would float.  
 20 Q. Can you say that again, please. I didn't  
 21 hear you.  
 22 A. He asked if we -- can we move this thing  
 23 up? Can we move it up a little bit?

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1 He asked to take the rug -- he asked to  
 2 take the rug with us, and I said no, because it would  
 3 float. I just didn't want to take the rug on the  
 4 boat.  
 5 Q. What happened after you put the cooler in  
 6 the car, in the Suburban?  
 7 A. I drove over to the Acme, over on, excuse  
 8 me, on -- the one across from Logan House, I believe  
 9 it is, would be Delaware Avenue, and --  
 10 Q. Is this near Trolley Square?  
 11 A. Yes, near Trolley Square. And then Tom  
 12 picked me up there.  
 13 Q. Had you agreed to meet at this Acme?  
 14 A. We did.  
 15 Q. Whose idea was that?  
 16 A. It was Tom's.  
 17 Q. And about how long after you left the  
 18 Grant Avenue home in your truck, until the time you  
 19 parked and met Tom at the Acme parking lot, about how  
 20 long was that?  
 21 A. It wasn't long, five, maybe ten minutes.  
 22 Q. Do you know where he went during that  
 23 five or ten minutes?

1 A. I do now, but I didn't then.

2 Q. What did you do once he arrived at the  
3 Acme parking lot?

4 A. Locked my truck and got in the Suburban.

5 Q. And where did you go?

6 A. We went to Stone Harbor.

7 Q. Did you have a home in Stone Harbor at  
8 that point?

9 A. I did.

10 Q. Where did you keep your boat?

11 A. Behind my home.

12 Q. Which home?

13 A. It's 10607 Third Avenue.

14 Q. And that's in Stone Harbor?

15 A. Yes.

16 Q. On the way to Stone Harbor, what did your  
17 brother Tom say to you?

18 A. He didn't talk very much. He was telling  
19 me that it was going to be okay, because I was real  
20 scared, and that's pretty much it.

21 Q. What did you say to him?

22 A. I told him that I was scared. I told him  
23 that this wasn't right, and that that's it.

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1 Q. Did he ever make any reference to the  
2 extortion or his kids during the conversation in the  
3 car?

4 A. I believe that he said if somebody was  
5 threatening to hurt your kids -- I am unclear on that  
6 one. I'm unclear on that one.

7 Q. Did you drive directly to Stone Harbor?

8 A. We did.

9 Q. Who drove?

10 A. He did.

11 Q. What happened when you got to Stone  
12 Harbor?

13 A. He backed up in the driveway and I  
14 believe we both went inside. And I think I went to  
15 the bathroom first and I think he used the phone, and  
16 then I got a couple fishing rods and put them on the  
17 boat and started the boat up.

18 And then he came outside, and then we  
19 both carried the cooler down to the boat and then put  
20 the chain and the lock in a plastic bag and I carried  
21 that down to the boat. And then he moved the car, I  
22 think a block away. And we left in the boat.

23 Q. Now, why did you take fishing rods with

1 you in the boat?

2 A. So it would look like we were going  
3 fishing.

4 Q. Were you worried that this cooler looked  
5 unusual on a boat?

6 A. No.

7 Q. Why not?

8 A. It's your typical fishing cooler.

9 Q. Was your brother Tom a fisherman?

10 A. No.

11 Q. Where did you go once you had the cooler,  
12 and the fishing rods, and the bag on the boat?

13 A. We went to get fuel, which is right on  
14 the other side of the Stone Harbor Bridge on the  
15 left. I think it's a Texaco. It changes yearly, the  
16 gas station does. It may have been a Texaco at that  
17 time. And then went back underneath the Stone Harbor  
18 Bridge and underneath the free bridge, and took a  
19 left out past the Stone Harbor cut.

20 Q. All right. Let's back up. This Texaco  
21 station, is that located at Stone Harbor Marina?

22 A. Pardon me?

23 Q. Is that at the Stone Harbor Marina?

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1 A. It may be called Stone Harbor Marina now,  
2 yes.

3 Q. Did you normally go to that gas station?

4 A. No.

5 Q. And where did you normally go?

6 A. Smuggler's Cove.

7 Q. Had you been to this gas station, the  
8 Texaco one before?

9 A. Probably.

10 Q. How much gas do you get; do you recall?

11 A. It was somewhere around a hundred and  
12 fifty, a hundred and eighty dollars worth of fuel. I  
13 honestly don't remember.

14 Q. Who paid for the gas?

15 A. Tom did.

16 Q. How did he pay for it?

17 A. Cash.

18 Q. Once you had the gas, what did you do?

19 A. Went out underneath the bridge,  
20 underneath the free bridge, and out the cut.

21 Q. And the cut, for those of us who aren't  
22 familiar with the water, is what?

23 A. The cut is before the Hereford's Inlet,

1 and there's -- Stone Harbor way of keeping to the  
2 ocean.

3 Q. It's a shortcut, is that right?

4 A. Yes.

5 Q. Once you went out and you hit the inlet,  
6 on what course did you go?

7 A. Due east.

8 Q. And how did you know you were going due  
9 east?

10 A. Towards the sun.

11 Q. Who was driving the boat?

12 A. I was.

13 Q. Did you have any navigational equipment  
14 on your boat?

15 A. I did.

16 Q. What did you have in that way?

17 A. I had radar, Lowrance, VHF radio, depth  
18 finder.

19 Q. Let's talk about this. It's a Lowrance?

20 A. Yes, it's a Lowrance, it's a plotter, you  
21 know -- it's also a depth finder, a speed depth  
22 finder. It's a charter.

23 Q. Was your Lowrance on that morning?

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1 A. The Lowrance was on, and it was on the  
2 depth finder mode.

3 Q. And so was it able to indicate longitude  
4 and latitude of the course that you were pursuing?

5 A. It may have, but I didn't have it on that  
6 mode.

7 Q. Okay. You only had it on the depth mode?

8 A. That's right.

9 Q. How far out did you go due east?

10 A. For about two and a half hours, which  
11 would probably put you out there between 60 and 70  
12 miles. It was 198 feet of water.

13 Q. Are you certain it was 198 feet of water?

14 A. Yeah.

15 Q. Excuse me?

16 A. I am.

17 Q. What did you do when you reached 198 feet  
18 of water?

19 A. Stopped. Turned the boat off.

20 Q. And then what?

21 A. Told him he was on his own and I went to  
22 the front of the boat.

23 Q. What did your brother do when you were at

1 the front of the boat?

2 A. I had my back to him. It sounded like he  
3 was putting the cooler in the water, and rustling  
4 around with the anchors, and throwing up, because it  
5 was kind of rough, whatever else.

6 Q. Now, let's take a step back. When you  
7 first turned off the engine of the boat, where was  
8 the cooler?

9 A. The back -- the back starboard side,  
10 which would be the right side. The back starboard  
11 side.

12 Q. All right. How did the cooler get into  
13 the water?

14 A. He put it in. He put the cooler in the  
15 water.

16 MR. OTERI: Excuse me, I didn't get that.

17 THE WITNESS: I'm sorry.

18 BY MR. CONNOLLY:

19 Q. How did the cooler -- when you turned the  
20 engine off, how did the cooler get into the water?

21 A. I'm unclear on whether or not I helped  
22 him pick it up and put it in the water and then  
23 walked to the front of boat or if he did it himself.

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1 Q. Do you know whether the cooler sank?

2 A. The cooler did not sink.

3 Q. How do you know?

4 A. Because I shot it with the gun, tried to  
5 make it sink.

6 Q. What gun did you use to shoot the cooler?

7 A. I had a shotgun that I used to keep on  
8 the boat for killing big sharks and it's a 12 gauge  
9 Mossberg, stainless steel.

10 Q. And you shot the cooler?

11 A. I did, with a deer slug.

12 Q. And what happened?

13 A. Nothing. The cooler didn't sink.

14 Q. Did you see anything come out where the  
15 bullet had gone in?

16 A. It was 30, 40 yards away, floating,  
17 looked to be something red coming out, but I'm unsure  
18 of that.

19 Q. Are you unsure that it looked to be red,  
20 or are you unsure what it was?

21 A. I'm unsure what it was.

22 Q. Are you sure it was red?

23 A. Yes.

1 Q. When the cooler didn't sink, what did you  
2 do?

3 A. We pulled the boat up next to it, up next  
4 to the cooler, and then I shut the boat off and went  
5 back up to the front of the boat. I believe that's  
6 when I went to the front of the boat, and I think I  
7 did help him pick the cooler up and put it over the  
8 water the first time.

9 Q. Okay. So, now, the first time you helped  
10 him. The second time you pulled alongside the  
11 cooler?

12 A. Right. That's when I told him he was on  
13 his own and I went to the front of the boat.

14 Q. Did you give him anything at that point?

15 A. I laid two anchors down next to him, and  
16 that was before I went to the front of the boat.

17 Q. Why did your boat have two anchors?

18 A. I always carry two anchors. If you take  
19 the boat to the island where people go and anchor up  
20 and, you know, bring their kids and whatnot, you can  
21 anchor the front of the boat and the back of the boat  
22 so it stays still.

23 Q. When you pulled alongside of the cooler,

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1 what side did you come up next to on the cooler?

2 A. Same side, starboard side.

3 Q. That's the right side of the boat?

4 A. Yes.

5 Q. And after you put the anchors down, and  
6 said to your brother you're on your own, where did  
7 you go?

8 A. To the front of the boat. I leaned  
9 against the bow rails.

10 Q. Which way were you looking?

11 A. Forward.

12 Q. Were you saying anything?

13 A. I was telling him this was not right.  
14 This was wrong.

15 Q. Could you hear anything from the back of  
16 the boat?

17 A. I could hear him throwing up and I could  
18 hear rustling of chains and the anchors, that's it.

19 Q. At some point did you turn around?

20 A. I did.

21 Q. What did you see?

22 A. I asked him, I said, "Are you done? Are  
23 you done?" And he finally answered, "Yes." And I

1 came back and I saw a foot going down.

2 Q. A human foot?

3 A. Yes.

4 Q. Were you able to determine what gender  
5 this human foot was?

6 A. No. No.

7 Q. How much did you see of the foot?

8 A. Little bit of the shin and the foot.

9 Mostly just the bottom of the foot and the ankle.

10 Q. Where was the cooler?

11 A. The cooler was floating.

12 Q. Where were the anchors?

13 A. They were gone.

14 Q. What did you do at that point?

15 A. I believe we jockeyed the boat around  
16 again to pick the cooler up, and then we dipped the  
17 cooler in the water to clean out anything that was in  
18 there, ice or whatever, and then we pulled it in the  
19 boat and we headed for home.

20 Q. What happened to the bag with the chain  
21 and the lock in it?

22 A. It got thrown in. I didn't see the lock

23 and the chain get thrown in. I saw the keys get

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1 thrown in to the lock.

2 Q. Who threw the keys to the lock in the  
3 ocean?

4 A. Tom did.

5 Q. So when you turned around and the anchors  
6 were gone, at that point did you see the chain or the  
7 lock?

8 A. No.

9 Q. They were gone?

10 A. Yes.

11 Q. Now, when you headed back to the shore,  
12 did you pursue a certain course?

13 A. Yeah, I turned around and headed 310.

14 Q. That's 310 degrees?

15 A. That's right.

16 Q. So you were looking at your navigational  
17 equipment?

18 A. Just the compass.

19 Q. Compass. Who was driving the boat as you  
20 started back?

21 A. I believe I was.

22 Q. What did you do with the cooler?

23 A. Pulled it in and I took the hinges off,



1 unscrewed the hinges, and threw the top of the cooler  
2 in the water, and Tom was driving slowly when I did  
3 that. And then about five minutes later, we just  
4 threw the cooler in too, and we just kept heading  
5 home.

6 Q. Why did you take the lid off the cooler?

7 A. So it would look like it was broken, just  
8 abandoned.

9 Q. Do you recall what kind of screws were on  
10 the hinges?

11 A. Philips head.

12 Q. On the way back to Stone Harbor, what did  
13 your brother say to you?

14 A. We didn't talk very much. He just said  
15 it was going to be all right; that he would never let  
16 anything happen to me, because I was telling him this  
17 was wrong, and I was scared. And he said it was  
18 going to be all right, that nothing would happen, and  
19 that he would never let anything happen to me.

20 Q. Now, would you tell us what the first  
21 sight of land you saw was as you returned back from  
22 dumping the cooler?

23 A. It was the water to your -- to the left

1 of Cape May. Probably Ocean City or Rehoboth water  
2 tower.

3 Q. Was this south of Cape May, New Jersey?

4 A. It was south of Cape May.

5 Q. When you saw that, what did you do as far  
6 as your course?

7 A. Went hard right.

8 Q. Hard right would be north?

9 A. Hard right would be north, follow the  
10 beach line up.

11 Q. Did you go back to your house at Stone  
12 Harbor?

13 A. I'm sorry?

14 Q. Did you return to your home in Stone  
15 Harbor?

16 A. Yes.

17 Q. And what happened when you arrived back  
18 at your Stone Harbor house?

19 A. I don't remember if we went in and went  
20 to the bathroom or if we just got in the car and  
21 left. I would think that we went in, because I would  
22 have to put the fishing rods away.

23 Q. Now, when you were out on the ocean,

1 before you returned home, did you see any other  
2 boats?

3 A. I did.

4 Q. When?

5 A. I saw a small boat out the same area we  
6 were in with a dive flag.

7 Q. You said the same area. Is this when you  
8 stopped your boat?

9 A. Yes.

10 Q. Did you see any people?

11 A. No.

12 Q. About how far away was this other boat?

13 A. Quarter mile.

14 Q. Weren't you afraid if you fired a shotgun  
15 you might draw attention to yourself?

16 A. No.

17 Q. Why not?

18 A. People are always firing guns out there  
19 trying to kill sharks, catch a big shark. You have  
20 to kill it before you bring it in the boat.

21 Q. After you arrived at your house in Stone  
22 Harbor, you said you may or may not have gone in the  
23 house, is that right?

1 A. I'm sure I went in to put the fishing  
2 rods away.

3 Q. And at that point, what did you do? Did  
4 you go anywhere in Stone Harbor?

5 A. No. I believe we just came right home.

6 Q. Who drove home?

7 A. Tommy did.

8 Q. And on the way home, did he ask you  
9 anything?

10 A. He said -- he told me what to say if I  
11 was ever to be questioned.

12 Q. What did he tell you to say?

13 A. That he had met me in the morning at my  
14 house to talk about a property that my mother was  
15 giving him and myself, and that I left, excuse me,  
16 and went to the beach, and then that he left and went  
17 over to my brother Louis' to talk to Louis about the  
18 property, and then he met me down to the beach later,  
19 and we had lunch down at the beach. And then I think  
20 it was to -- we went and walked a new piece of  
21 property that I was buying down there, or had already  
22 bought, and he either -- he either said he was going  
23 to go over to my sister's in Stone Harbor, or my

1 mother's in Stone Harbor, but, you know, I left  
2 first.

3 Q. This would have been your sister Marion  
4 or your mother?

5 A. Right.

6 Q. Did he ask you to do anything else for  
7 him as you drove back?

8 A. He asked me to help throw a love seat  
9 away that was at Grant Avenue.

10 Q. Did you agree to throw the love seat  
11 away?

12 A. I did.

13 Q. Did you go straight to Grant Avenue or  
14 did you go to pick up your truck first?

15 A. I went to pick up my truck.

16 Q. And then what?

17 A. Then went to Grant Avenue, carried the  
18 love seat out --

19 Q. Let's -- did you go inside the house?

20 A. Yes.

21 Q. And what room did you go in?

22 A. The room with the TV, the room upstairs  
23 with the TV in it, off the kitchen.

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1 Q. When you went into this room, what  
2 furniture did you see?

3 A. Saw a love seat.

4 Q. And what color was it?

5 A. Dark maroon.

6 Q. Would you describe this love seat for us,  
7 what you saw?

8 A. It had a stain on it, on the right, if  
9 you were sitting on it, on the right side about  
10 shoulder height.

11 Q. How big was the stain?

12 A. About the size of a basketball.

13 Q. What color was the stain?

14 A. I couldn't tell. The couch was maroon.

15 Q. What did you do with the couch?

16 A. We carried it out the double doors of  
17 that room, and down the steps, which would be in the  
18 front of the house, and around to the garage, and at  
19 that point I cut the stained piece off of it, and  
20 tried to break the couch up so that it looked like it  
21 was just an old broken up couch, and we threw it in  
22 the dumpster.

23 Q. You say you cut up the stain --

1 A. Yes.

2 Q. What did you cut it with?

3 A. I always carry a pocket knife.

4 Q. When you cut off -- or when you cut into  
5 the couch, what did you see in the foam underneath  
6 the covering?

7 A. Looked to be something red.

8 Q. I'm sorry?

9 A. Looked to be something red.

10 Q. What did you do with the pieces that you  
11 had cut out of the couch?

12 A. Tom put them in a bag, a garbage bag.

13 Q. Where was that?

14 A. In the garage.

15 Q. Had you seen those garbage bags that  
16 morning, when you first went into the garage?

17 MR. MAURER: That's a leading question,  
18 Your Honor. Objection.

19 THE COURT: Sustained.

20 BY MR. CONNOLLY:

21 Q. Had you seen those garbage bags before?

22 A. I'm not sure if it was garbage or there's  
23 bags next to the rug or near the rug in the garage.

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1 Q. Well, what did you do with the couch once  
2 you had cut out the pieces from it?

3 A. Tried to break it up, so that -- excuse  
4 me, so that it looked like it was just an old busted  
5 up couch, and we stuck it in the Suburban and we  
6 drove it up to the office building on Foulk Road and  
7 put it in the dumpster.

8 Q. Whose office building was this at Foulk  
9 Road?

10 A. My brother Louie's.

11 Q. Whose idea was it to bring the couch  
12 there?

13 A. It was mine, because I knew there was a  
14 dumpster there.

15 Q. And where was the dumpster located on the  
16 site?

17 A. In between the big -- in between the  
18 big -- I don't know how to explain it. It's in  
19 between two office buildings, but there's four office  
20 buildings up there.

21 Q. Could you see the dumpster from Route 202  
22 if you were driving by?

23 A. I don't think so.

1 Q. How did you get the couch into the  
2 dumpster?  
3 A. Picked it up and threw it in there.  
4 Q. By yourself?  
5 A. No; Tom helped me.  
6 Q. What did you do then?  
7 A. Got inside the dumpster and put some  
8 stuff on top of it.  
9 Q. What did you do once you had left the  
10 couch in the dumpster?  
11 A. I went home.  
12 Q. Were there any plans made between you and  
13 your brother at that point as to where to meet or  
14 what to do next?  
15 A. No.  
16 MR. CONNOLLY: Your Honor, I can stop  
17 here.  
18 THE COURT: All right. Please take the  
19 jury out.  
20 (The jury left the courtroom at 11:30  
21 a.m.)  
22 THE COURT: Stand in recess until the  
23 Call of the Court.

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1 (Recessing at 11:30 a.m.)  
2 (Reconvening at 11:55 a.m.)  
3 THE COURT: Please bring the jury in.  
4 (The jury entered the courtroom at 12:00  
5 p.m.)  
6 THE COURT: Mr. Connelly, you may  
7 proceed.  
8 MR. CONNOLLY: Thank you, Your Honor.  
9 Your Honor, at this point I would move  
10 into admission, without objection, State Exhibits 82  
11 through 93. They're various photographs.  
12 MR. MAURER: Without objection.  
13 THE COURT: Thank you, Mr. Maurer. The  
14 Exhibits will be admitted as indicated 82 through 93.  
15 THE CLERK: So marked.  
16 (Whereupon State's Exhibit Nos. 82  
17 through 93, photographs, were received into  
18 evidence.)  
19 THE COURT: Thank you.  
20 MR. CONNOLLY: Your Honor, if I could  
21 have the televisions turned on.  
22 BY MR. CONNOLLY:  
23 Q. Mr. Capano, I'm going to show you State

1 Exhibit 82. Do you recognize that?  
2 A. My house.  
3 Q. That's the house at Emma Court?  
4 A. Yes.  
5 Q. And this is State Exhibit 83.  
6 A. My driveway.  
7 Q. That's to the left of the front of the  
8 home?  
9 A. Yes.  
10 Q. Who's your neighbor to the left of the  
11 driveway?  
12 A. Jeff Stape.  
13 Q. I'm going to show you State Exhibit 84.  
14 Do you know what kind of car that is?  
15 A. Excuse me?  
16 Q. Do you know what type of car that is?  
17 A. Jeep Grand Cherokee.  
18 THE COURT: We're having a little trouble  
19 with this monitor up here.  
20 Excuse the interruption.  
21 MR. CONNOLLY: That's all right.  
22 THE COURT: If it's fixable, we should.  
23 MR. CONNOLLY: I know they tried very

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1 hard to fix that and haven't gotten anywhere.  
2 THE COURT: All right. Thank you.  
3 BY MR. CONNOLLY:  
4 Q. This is a black Grand Cherokee, is that  
5 what you said?  
6 A. Yes.  
7 Q. Is this the type of car that you  
8 identified that your brother was in on your driveway  
9 that morning?  
10 A. Yes.  
11 Q. I'm going to show you State Exhibit 85.  
12 Do you recognize that?  
13 A. It looks like the house on Grant Avenue.  
14 Q. You have a monitor in front of you?  
15 A. It's not on.  
16 Q. All right. Can you see that photo, that  
17 TV over there?  
18 A. Yes.  
19 Q. Looking at that TV, I'm going to point  
20 to -- do you see this set of doors here?  
21 A. The double doors.  
22 Q. The double doors.  
23 Tell us about those doors.

1 MR. CONNOLLY: Your Honor, at this point  
2 I would like to play the tape, State Exhibit 77.  
3 THE COURT: Mr. Maurer, I note that  
4 previously there was an objection to whether this  
5 evidence could be submitted to the jury.  
6 MR. MAURER: Correct, Your Honor, but I  
7 have no objection at this point in time since we're  
8 at this stage.  
9 THE COURT: All right. Thank you very  
10 much.  
11 You may proceed, Mr. Connolly.  
12 MR. CONNOLLY: Your Honor, if I could  
13 just instruct the jury. If you place this on mono,  
14 you'll get better reception. And then the transcript  
15 is on tab 17.  
16 THE COURT: Again, I should inform the  
17 jury that the purpose of the transcript is to help  
18 you understand the recording itself. The recording  
19 is the best evidence of what was said, and to the  
20 extent that your ears disagree with your eyes, you  
21 are to rely on what you hear rather than what you  
22 read.  
23 (Tape played of Gerard Capano.)

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1 BY MR. CONNOLLY:  
2 Q. Mr. Capano, when you made that statement  
3 we just heard, do you recall approximately when  
4 during the day you made that statement?  
5 A. I believe it was mid-morning. In the  
6 morning -- it was before noon, wasn't it?  
7 Q. Had you spoken with the agents before the  
8 tape was made to tell them about what you described  
9 in the tape?  
10 A. No, sir.  
11 Q. Had you spoken with them that day, in the  
12 conference room?  
13 A. Yes, sir.  
14 Q. Was the tape made as soon as you walked  
15 in the door or was it made after you had debriefed  
16 the agents?  
17 A. It was made afterwards.  
18 Q. And on that day, before you made the  
19 statement, you said in the tape, and even earlier  
20 today, that you had signed a plea agreement, is that  
21 right?  
22 A. I did.  
23 MR. CONNOLLY: Your Honor, at this point

1 I would move to admit State Exhibit --  
2 THE COURT: 101.  
3 MR. CONNOLLY: -- 101.  
4 THE COURT: Is there an objection?  
5 MR. MAURER: No, Your Honor.  
6 THE COURT: Thank you, Mr. Maurer.  
7 THE CLERK: So marked.  
8 THE COURT: Thank you.  
9 (Whereupon State's Exhibit No. 101, plea  
10 agreement, was received into evidence.)  
11 BY MR. CONNOLLY:  
12 Q. Mr. Capano, I'm going to hand you State's  
13 Exhibit 101, and I'm going to ask you, do you  
14 recognize that?  
15 A. Yes.  
16 Q. What is it?  
17 A. It's a plea agreement.  
18 Q. Who signed the plea agreement?  
19 A. I did, and Mr. Lyons, and you did.  
20 Q. Now, I'd like you to turn to page one of  
21 the plea agreement. What did you agree to plead  
22 guilty to?  
23 A. Misprision of a felony, which means that

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1 I knew somebody did something wrong and didn't tell  
2 them.  
3 Q. And what was the main benefit for you to  
4 sign the plea agreement?  
5 A. That I didn't go to jail.  
6 Q. Now, you mentioned that agents had raided  
7 your home?  
8 A. They did.  
9 Q. Was it your understanding that -- well,  
10 what did they find when they raided your home?  
11 A. Small amounts of cocaine, some marijuana,  
12 some guns.  
13 Q. Were you aware that you could go to jail  
14 for that?  
15 A. I am now. I suppose I was.  
16 Q. Before you entered the plea agreement,  
17 had you discussed with your attorney the possibility  
18 that you could go to jail?  
19 A. After he raided the house?  
20 Q. Yes.  
21 A. Yes.  
22 Q. What was your understanding as far as how  
23 much jail time you could look at?

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